



(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 25.1.2022

Order delivered on 18/02/2022

MCRC (A) No.1624 of 2021

1. Pawan Kumar Agrawal, S/o Shri Ramkumar Agrawal, aged about 50 years.
2. Ashok Kumar Agrawal, S/o Shri Ramkumar Agrawal, aged about 53 years.
Both R/o Pyarelal Agrawal Marg, Ramsagar Para, Raipur 492001 (CG)

---- Applicants

Versus

- Enforcement Directorate through I.O., Enforcement Directorate (FEMA / PMLA) Raipur (CG).

---- Non-applicant

For Applicant :	Mr. Chirag Madan along with Mr. Krishna Tandon, Mr. Vipin Sharma, Mr. Somesh Tiwari, Mr. Utsav Saxena, Ms. Vidula Mehrotra, Advocates.
For Non-applicant :	Dr. Saurabh Kumar Pande, Advocate with Mr. Anil S Pandey, Advocate

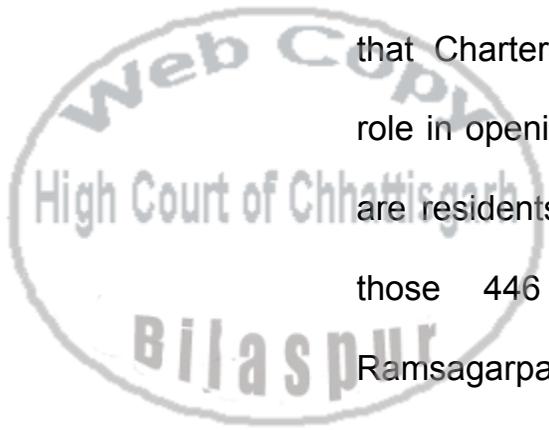
Hon'ble Mr. Justice Parth Prateem Sahu

CAV Order

1. This is first application under Section 438 of CrPC for grant of anticipatory bail to applicants as they apprehend their arrest in connection with Complaint Case No.1/2021 filed under Section 45 of the Prevention of Money Laundering Act, 2002 (for short 'the Act of 2002') based on Crime No. ECIR/RPSZO/01/2017 registered at Enforcement Directorate, Sub-zone Raipur, District Raipur (CG) for commission of offence punishable under Sections 3 & 4 of the Act of 2002.
2. Case of prosecution, in brief, is that based on information received from Income Tax Department, FIR was registered by Economic Offence Wing / Anti Corruption Bureau, Raipur



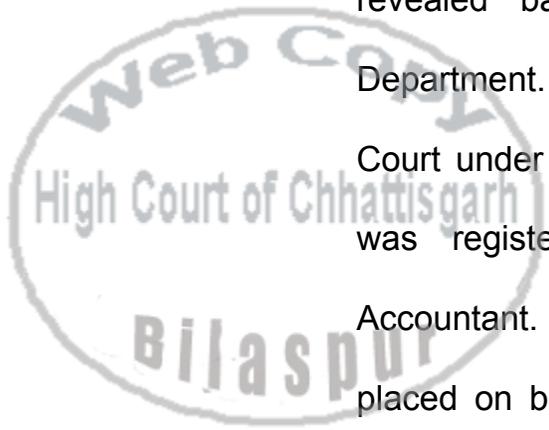
against one Babulal Agrawal (IAS) for alleged commission of offence defined under Sections 13 (1) (e) & 13 (2) of the Prevention of Corruption Act, 1988. During search conducted by Income Tax Department, Babulal Agrawal was found in possession of huge cash and jewelleryes. During investigation, Sunil Agrawal, Chartered Accountant of Babulal Agrawal, was found in possession of 230 bank pass-books of different persons, created 13 shell companies, which are controlled by Sunil Agrawal, Chartered Accountant of Babulal Agrawal, and M/s Prime Ispat Ltd. It also came to knowledge in investigation that Chartered Accountant Sunil Agrawal played significant role in opening of 446 bank accounts of various persons who are residents of rural areas. Huge money was deposited in those 446 bank accounts opened at Pandri and Ramsagarpara branches of Union Bank of India, Raipur within short period. Money from these accounts was firstly transferred to 13 shell companies and thereafter to M/s Prime Ispat Pvt. Ltd. as share capital. Total amount invested in M/s Prime Ispat Pvt. Ltd. through 13 shell companies was Rs.39,61,93,598/- approximately. Initially police registered offence under Sections 420, 468, 471 of IPC against Chartered Accountant Sunil Agrawal. After due investigation, complaint case under Section 45 of the Act of 2002 was also filed before the Court of competent jurisdiction against applicants and others including bank officials. After issuance of summons, applicants filed an application for grant of anticipatory bail before the Court below which came to be





rejected vide order dated 25.11.2021.

3. Mr. Chirag Madan, learned counsel for applicants would submit that initially based on information supplied by Income Tax Department, an inquiry / investigation was conducted and FIR was registered against Sunil Agrawal, Chartered Accountant. Sunil Agrawal, Chartered Accountant of Babulal and M/s Prime Ispat Ltd., was arrested for commission of offence defined under Sections 420, 468, 471 of IPC. Upon further investigation, involvement of applicants were also revealed based on material collected by non-applicant Department. A complaint case was filed before the Special Court under the Act of 2002. He submits that initially crime was registered only against Sunil Agrawal, Chartered Accountant. Perusal of entire material available in file either placed on behalf of applicants or non-applicant, there is no specific allegation against applicants. Applicants are not having any relation in opening of any of bank accounts, as alleged in complaint i.e. 446 bank accounts or in creating 13 shell companies. Applicants have participated during course of inquiry / investigation, provided documents, their statements under Section 50 of the Act of 2002 were also recorded. They have not avoided investigation process. As they have already participated in investigation proceedings, therefore, there is no chance of their fleeing away. After inquiry/investigation by non-applicant Department complaint case is filed, no custodial interrogation is required. Hence, applicants may be extended





benefit of anticipatory bail under Section 438 of CrPC.

In support of above contention, learned counsel places his reliance on decision of Hon'ble Supreme Court in **Gurbaksh Singh Sibbia vs. State of Punjab** reported in (1980) 2 SCC 565; **Sushila Aggarwal vs. State (NCT of Delhi)** reported in (2020) 5 SCC 1; **Nathu Singh v. State of UP** reported in (2021) 6 SCC 64; **Sunil Bharti Mittal v CBI** reported in (2015) 4 SCC 609; **Sharad Kumar Sanghi v. Sangita Rane** reported in (2015) 12 SCC 781; **Managing Director, Castrol India Ltd. vs. State of Karnataka** reported in (2018) 17 SCC 275; **Maksud Saiyed vs. State of Gujarat & ors** reported in (2008) 5 SCC 668; **Siddharth v State of UP** reported in (2021) SCC Online SC 615; **SLP (Cri) No.7665/2021 Shyam Sunder Singh v State of Jharkhand; State of Maharashtra vs. Nainmal Punjaji Shah** reported in (1969) 3 SCC 904.

4. It is further contended by learned counsel for applicants that allegation is that amount deposited in benami bank accounts was invested in 13 shell companies. From 13 shell companies further investment is shown in M/s Prime Ispat Pvt. Ltd. as share capital. M/s Prime Ispat Ltd. is a company incorporated under the Companies Act, 1956, but complaint is not filed against M/s Prime Ispat Pvt. Ltd. Unless and until company is arrayed as accused, Directors of company cannot be prosecuted. Investigation is complete and based on summons, applicants are required to appear before the Court of



competent jurisdiction in complaint case. Hence, they be extended benefit of anticipatory bail as arrest of applicants is not necessary. Hon'ble Supreme Court in **SLP (Crl) No.5191/2021**, parties being **Satender Kumar Antil vs. CBI & anr**, has clarified position for grant of anticipatory bail / regular bail to accused persons and application of Section 45 of the Act of 2002. Punishment prescribed under Sections 3 & 4 of the Act of 2002 is not of more than seven years, hence in view of observation made by Hon'ble Supreme Court in case of **Arnesh vs. State of Bihar** reported in **(2014) 8 SCC 273**, application may be allowed. Applicants are also entitled for benefit of bail in view of proviso to Section 45 of the Act of 2002. It is further argued that some of non-applicants in complaint case have been granted benefit of anticipatory bail considering that they have co-operated in investigation/inquiry. Since case of applicants also stands on similar footing, they may also be extended benefit of anticipatory bail.

5. Dr. Saurabh K Pandey, learned counsel for non-applicant opposes submissions of learned counsel for applicants and submits that case of other co-accused persons, who have been granted anticipatory bail, stands on different footing from that of present applicants as they were officials/employees of bank where alleged 446 benami bank accounts were opened in which huge amount was deposited. Amount deposited in 446 bank accounts was shown invested in 13 companies which are shell companies. From account of 13 shell



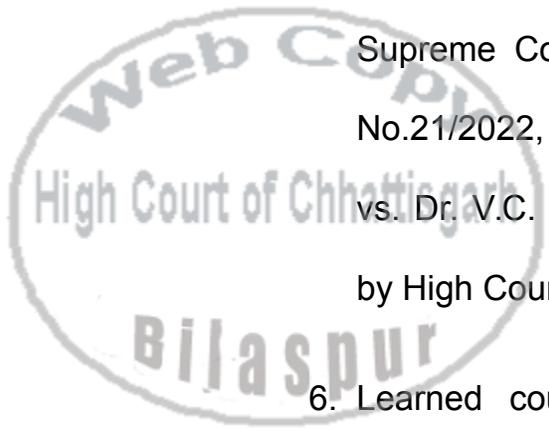
companies amount was invested in M/s Prime Ispat Ltd. of which present applicants are Directors as share capital. Applicants in collusion with Sunil Agrawal, Chartered Account, his relatives; Babulal Agrawal (IAS) (brother of applicants) got opened 446 bank accounts in Pandri and Ramsagarpara branches of Union Bank of India, Raipur; deposited huge amount in benami bank accounts and invested in 13 shell companies created by Sunil Agrawal and others; thereafter said amount was invested in share capital of M/s Prime Ispat Ltd. He submits that Section 3 of the Act of 2002 defines offence of money laundering which is very exhaustive and includes concealment or possession or acquisition or use of money either directly or indirectly. During course of inquiry/investigation, sufficient material is collected against applicants and even Sunil Agrawal, Chartered Accountant in his statement recorded under Section 50 of the Act of 2002 stated about involvement of applicants in commission of crime. In statement of Sunil Agrawal (co-accused) it has come that amount deposited in 446 benami bank accounts was given by applicants. Applicants in connivance with others are indulged in committing offence under the Act of 2002 which involves huge amount of Rs.39,61,93,598/-. He further contended that the Courts misinterpreting judgment passed by Hon'ble Supreme Court in **Nikesh Tarachand Shah vs. Union of India** reported in **(2018) 11 SCC 1**, started granting bail as if entire Section 45 of the Act of 2002 was struck down. In fact, only part of Section 45 of the Act of 2002 was struck





down by Hon'ble Supreme Court holding it to be unconstitutional. Later on, Section 45 has been amended by Amendment Act of 2018. After amendment of Section 45 in the year 2018, vires of Section 45 of the Act of 2002 was again challenged and is pending consideration before Hon'ble Supreme Court. Unless and until amended provisions of Section 45 of the Act of 2002, under challenge, is declared to be unconstitutional, it cannot be made inapplicable. Section 45 of the Act of 2002 imposes twin conditions for release of accused committed offence under the Act of 2002. Hon'ble Supreme Court recently vide order dated 4.1.2022 in Cr.A. No.21/2022, Assistant Director, Department of Enforcement vs. Dr. V.C. Mohan, set aside order granting anticipatory bail by High Court of Tamil Nadu and remitted back the matter.

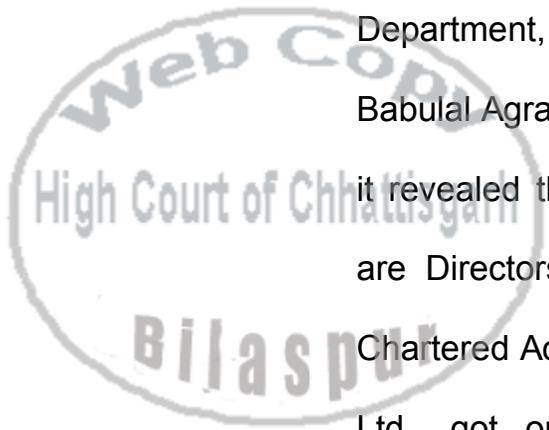
6. Learned counsel for applicants would submit that order passed in case of **Dr. V.C. Mohan (supra)** is *per inquirium*. Section 45 of the Act of 2002 will not attract in case at hand as amount involved is only Rs.20 Lakhs. He submits that in number of cases accused under Sections 3 & 4 of the Act of 2002 have been given benefit of bail. In support of his contention he places his reliance upon judgment passed by High Court of Delhi in case of **D.K. Shivkumar vs. Directorate of Enforcement** reported in **2019 SCC Online Delhi 10691**; **Directorate of Enforcement vs. Ratul Puri** reported in **2020 SCC Online Delhi 97**; **Laxman Singh vs. State of MP & ors** reported in **2018 SCC Online MP 1550**. In





case at hand, complaint was filed in the year 2018 and cognizance was taken only on 21.1.2021. Hence, applicants may be enlarged on anticipatory bail.

7. I have heard learned counsel for the parties and also perused documents placed on record by non-applicant Department which includes statement of co-accused Sunil Agrawal recorded under Section 50 of the Act of 2002.
8. Perusal of complaint would show that based on information received by non-applicant Department from Income Tax Department, inquiry/investigation was conducted against one Babulal Agrawal (IAS). During course of inquiry/ investigation, it revealed that Babulal Agrawal is brother of applicants and are Directors of M/s Prime Ispat Pvt. Ltd. Sunil Agrawal, Chartered Accountant of Babulal Agrawal and M/s Prime Ispat Ltd., got opened benami bank accounts in Pandri and Ramsagarpara branches of Union Bank of India, Raipur; bank account holders are villagers, labourers, betel shop vendors, agriculturists; some of them are unemployed. Huge amount was deposited in their accounts immediately after their opening. Amount deposited in benami bank accounts was invested in 13 shell companies, which in turn made investment in M/s Prime Ispat Pvt. Ltd. Applicants are Directors/ Managing Directors of M/s Prime Ispat. Tainted amount of Rs.39,61,93,598/- approximately was invested in M/s Prime Ispat. Sunil Agrawal, Chartered Accountant (accused in police case), received from applicants commission of Rs.20 Lakhs at

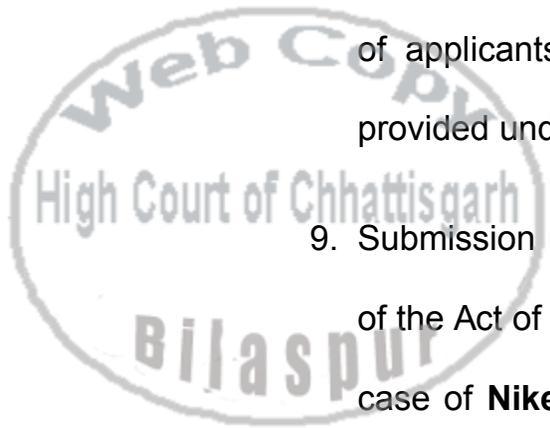




the rate of 0.5% against total investment of Rs.40 Crore approximately through shell companies. In the statement of Sunil Agrawal, Chartered Accountant, recorded under Section 50 of the Act of 2002, he has stated that he was instrumental in opening of 446 benami bank accounts in Pandri and Ramsagarpara branches of Union Bank of India, Raipur and money which was deposited in these accounts was given by applicants to his employee for depositing the same in benami bank accounts. From the contents of complaint *prima facie* it appears that it is an organized economic crime. Involvement of applicants is *prima facie* appearing in view of definition provided under Section 3 of the Act of 2002.

9. Submission of learned counsel for applicants that Section 45 of the Act of 2002 is struck down by Hon'ble Supreme Court in case of **Nikesh Tarachand Shah (supra)** is partially correct.

Hon'ble Supreme Court in aforementioned ruling had partly struck down Section 45 (1) of the Act of 2002 so far as it imposes two further conditions for grant of bail to be unconstitutional as it violates Articles 14 & 21 of the Constitution of India for the reasons mentioned therein. Subsequent to passing of order striking down part of provision under Section 45 of the Act of 2002, amendment is brought into Section 45 (1) of the Act of 2002 and twin conditions have been made applicable for the persons involved in committing an offence under the Act of 2002 and further leniency has been shown under proviso of granting bail to persons who are





under 16 years of age or a woman or sick or infirm or is accused either of his own along with other co-accused of money involving sum of less than Rs.1 Crore. Applicants do not fall under the proviso. Submission of learned counsel for applicant that value involved, as alleged against applicants, is Rs.20 Lakhs is not correct, it is only figure of commission given to co-accused Sunil Agrawal.

10. No argument is made before this Court with respect to Section 24 of the Act of 2002. Economic offence is deep rooted. It is committed with cool mind, calculation and deliberate design with an eye on personal profit regardless of consequences to the community.

11. Learned counsel for both sides have accepted position that after passing of judgment in **Nikesh Tarachand Shah's case** (supra), the Legislature amended part of Section 45 of the Act of 2002, which is again put to challenge and is pending consideration before Hon'ble Supreme Court. It is well settled that law framed by legislature is having presumption of its constitutionality, unless and until Constitutional Courts declared such law to be unconstitutional, it will have its force and therefore in the opinion of this Court, as twin conditions are still there in the Statute book after amendment in Section 45 of the Act of 2002, underlined principle and rigor of Section 45 of the Act of 2002 may get triggered once prayer for anticipatory bail is made in connection with offence under the Act of 2002.



12. Merely because case is registered on complaint and cognizance of complaint is taken by Court after about two years, will in itself is not a ground considering entitlement of anticipatory bail but it is to be considered on merits of each case. In case at hand, there is allegation of involvement of applicants for committing offence under the Act of 2002 and amount involved is more than Rs.39 Crores.

13. Considering the entire facts and circumstances of case, nature of allegations levelled against applicants; rulings relied upon by learned counsel for both sides, I do not find present to be a fit case where applicants can be enlarged on anticipatory bail.

14. Accordingly, bail application is rejected.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-

