

Directorate of Enforcement v. Rajeev Sharma
ECIR/05/STF/2021 dated 26.02.2021

09.07.2021

Present: Mohd. Faraz, Ld. Special PP for ED through VC.
Sh. Vinay Kumar, AD, PMLA through VC
Accused produced in custody 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.

Present is second application u/s 167(2) CrPC moved on behalf of the IO seeking further ED remand of accused Rajeev Sharma for seven days. It is submitted that during custodial interrogation, accused has been confronted with the bank statements and statement of other witnesses/accused persons. It is submitted that from the investigation conducted so far, it has been concluded that in addition to receipt of cash, the accused has also received gratifications in various other forms like paying for his own and his wife's foreign trips. It is submitted that digital data collected so far is yet to be analysed and accused is required to be further confronted with the same; accused is non-cooperative and giving evasive replies and for this reason, the investigation is still under progress and the stand of accused on certain crucial aspects is contrary to the records of the case.

Ld. SPP submitted that the department requires further custodial interrogation of the accused to unearth the exact quantum of the proceeds of crime; to ascertain all the entities and accounts linked to accused which were used in the commission of alleged offence of money laundering; to determine the role of various other persons and aides who facilitated the offence of

money laundering and also to unearth the entire modus operandi.

Ld. counsel for accused has vehemently opposed the instant application contending that accused has been arrested in a false case as no offence under PMLA is made out. It is submitted

money laundering and also to unearth the entire modus operandi.

Ld. counsel for accused has vehemently opposed the instant application contending that accused has been arrested in a false case as no offence under PMLA is made out. 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 FIR 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.

It is further argued by ld. defence counsel that the offence under Official Secret Act do not constitute a predicate offence as per the schedule under PMLA and hence, 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.

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

The objections of the defence can be primarily

categorized into following sub-heads:

1. The accused has been falsely implicated.
2. There is a considerable delay in the registration of the ECIR and the arrest of the accused.
3. No non-bailable offence is attracted in this case.
4. There is no requirement of further custody of the accused.

Let us deal with the objections in seriatim.

1. The accused has been falsely implicated

It is forcefully argued by Ld. counsel for the accused that accused is a 61 years old freelance journalist who has been falsely implicated in the instant case by the Directorate of Enforcement, with an intent to harass him.

Suffice it would be to observe that at this stage, there cannot be any conclusive finding regarding the plea of innocence or otherwise. Rather, the presumption of innocence strongly backs the accused but that does not give him a right to stall the ongoing investigations against him.

2. There is a considerable delay in the registration of the ECIR and the arrest of the accused.

It is pointed out by the Ld. counsel for the accused that pursuant to the bail order of the Hon'ble High Court of Delhi dated 13.09.2020 passed in FIR No. 230/2020, the instant ECIR was registered by the department only on 26.02.2021, after about six months of the registration of the FIR and after about 2 ½ months of the grant of bail by the Hon'ble Delhi High Court. It is submitted that while the accused was in custody of Special Cell; Delhi Police, he was thoroughly interrogated by the ED officials. It is submitted that the accused has duly cooperated with the investigating agency, not only during the period of his custody with Special Cell but even subsequent thereto when he was summoned by ED i.e. on 25.06.2021, 29.06.2021 and 30.06.2021 and yet he was mischievously arrested on 01.07.2021.

On the contrary, the Ld. counsel for ED has strongly

refuted the contention that the accused was interrogated by ED officials when he was in the custody of Delhi Police. It is submitted that the so called 'delay' indisputably supports the case of the ED as evidently the prosecution was not launched in haste.

At this stage, there is nothing on record to support the contention that the accused was interrogated by ED officials while he was in the custody of the Special Cell. Furthermore, the department cannot be castigated simply because it has opted to adopt a cautious approach instead of acting in haste. The submissions of the defence sounds hollow and ornamental and is taken on record to be discarded.

3. No non-bailable offence is attracted in this case.

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 is invoked against him which is a bailable offence, therefore, remand cannot be granted in the case at hand.

Admittedly, Section 3 of Official Secrets Act r.w Section 120-B IPC, inter alia, is reported to be invoked in case FIR No. 230/2020..

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

4. There is no requirement of further custody of the accused.

It is forcefully argued by Ld. defence counsel that the accused has been interrogated extensively by the Directorate of Enforcement and no recoveries are to be effected at the instance of the accused. It is further submitted that even a raid has also been conducted at the house of the accused. It is submitted that there is absolutely no plausible ground for extending the ED remand of the

accused.

On the contrary, Ld. SPP has forcefully argued that digital data collected so far is yet to be analysed and accused is required to be further confronted with the same and also with statement of other witnesses and accused persons; accused is non-cooperative and giving evasive replies and for this reason, the investigation is still under progress and the stand of accused on certain crucial aspects is contrary to the records of the case.

Ld. Counsel for the accused, in rebuttal, seriously disputes the contention and forcefully argues that the accused is fully cooperative.

In my considered opinion, a sustained custodial interrogation of the accused is desirable owing to the very intricate nature of the offence of money laundering. It has been observed by the Hon'ble Apex Court in the matter of **P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 4** that :

" 82. In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", **it requires systematic and analysed investigation which would be of great advantage.**

.....
.....
In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the department. Having regard to the nature of allegations and the stage of the investigation, **in our view, the investigating agency has to be given sufficient freedom in the process of investigation "**

It has also been observed by Hon'ble Apex Court that :-

" 57. Contention of the appellant that the court will have to scrutinise the questions put to the accused during interrogation and answers given by the appellant and satisfy itself whether the answers were "evasive or not", would amount to conducting "mini trial" and substituting court's view over the view of the investigating agency about the "cooperation" or "evasiveness" of the accused and thereafter, the court to decide the questions of grant of anticipatory bail. This contention is far-fetched and does not merit acceptance.

58. As rightly submitted by learned Solicitor General that if the accused are to be confronted with the materials which

were collected by the prosecution/Enforcement Directorate with huge efforts, it would lead to devastating consequences and would defeat the very purpose of the investigation into crimes, in particular, white collar offences. If the contention of the appellant is to be accepted, the investigating agency will have to question each and every accused such materials collected during investigation and in this process, the investigating agency would be exposing the evidence collected by them with huge efforts using their men and resources and this would give a chance to the accused to tamper with the evidence and to destroy the money trail apart from paving the way for the accused to influence the witnesses. If the contention of the appellant is to be accepted that the accused will have to be questioned with the materials and the investigating agency has to satisfy the court that the accused was "evasive" during interrogation, the court will have to undertake a "mini trial" of scrutinizing the matter at intermediary stages of investigation like interrogation of the accused and the answers elicited from the accused and to find out whether the answers given by the accused are 'evasive' or whether they are 'satisfactory' or not. This could have never been the intention of the legislature either under PMLA or any other statute.

59. **Interrogation of the accused and the answers elicited from the accused and the opinion whether the answers given by the accused are "satisfactory" or "evasive", is purely within the domain of the investigating agency and the court cannot substitute its views by conducting mini trial at various stages of the investigation.**

60. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds.."

Considering the totality of circumstances, I am of the considered opinion that the prosecution has set out a case for further custodial interrogation of the accused. Accused Rajeev Sharma is accordingly remanded to further ED custody till **14.07.2021**.

The medical examination of accused be conducted immediately before and after the remand.

Application is disposed off accordingly.

Copy of the order be given dasti.

DHARMENDER RANA Digitally signed by
DHARMENDER RANA
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(Dharmender Rana)
ASJ-02, NDD/PHC/New Delhi
09.07.2021