

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No.4575 of 2022

Suresh Kumar Petitioner
Versus
The Union of India through Directorate of Enforcement
.... Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Rajesh Kumar, Advocate
For the E.D. : Mr. Amit Kumar Das, Advocate

C.A.V. on 30.08.2022

Pronounced on 22.09.2022

Heard learned counsel for the applicant and learned A.P.P. for the State as well as learned counsel for the informant.

2. This anticipatory bail application has been filed on behalf of the abovenamed applicant with prayer to release on anticipatory bail in connection with Enforcement Case Information Report No.03 of 2021 registered under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter to be referred as "the Act, 2002") pending in the court of learned Special Judge, C.B.I.-cum-PMLA, Ranchi.

3. Learned counsel for the applicant has submitted that Directorate of Enforcement recorded an Enforcement Case Information Report No.RNSZO/06/2018 dated 24th October, 2018 for investigation of offence under the provisions of the Act, 2002 against Sanjay Kumar Tiwary, Suresh Kumar (both partners of M/s. Bhanu Construction), M/s. Bhanu Construction, a partnership firm and Ajay Oraon, the Deputy Manager of State Bank of India, Hatia Branch, Ranchi and others on the basis of charge-sheet bearing no.04 of 2019 dated 26.06.2019 filed by CBI, ACB, Ranchi before the court of learned Spl. Judge, C.B.I., Ranchi under Section 120-B read with 406, 409 and 420 of the Indian Penal Code and 13(2) read with 13(1)(d) of Prevention of Corruption Act.

4. It is alleged that a saving bank account no.33954815459 of "Jharkhand Rajya Madhayan Bhojan Pradhikaran" was maintained at State Bank of India, Hatia Branch, Ranchi. On 04.08.2017, the said branch received total six numbers of debit advices from the Department of Jharkhand Rajya Madhayan Bhojan Pradhikaran, Government of Jharkhand for transfer of Rs.120.31 crores from their saving bank accounts to multiple accounts maintained with different banks including SBI. As per advice, Rs.20.29 crores were to be transferred to bank account with SBI and Rs.100.01 crores were to be transferred to other bank accounts. For bulk transfer through RTGS/NEFT, Rs.100.01 crores were debited from the saving bank account of Jharkhand Rajya Madhayan Bhojan Pradhikaran and temporarily parked in office/suspense account of the branch for processing of transfer through RTGS/NEFT to various accounts but due to failure in bulk uploading the entire amount got returned to the office/suspense account of the Branch.

It was revealed that Shri Ajay Oraon, the then Deputy Manager (Business Development Department) S.B.I. Hatia Branch, Ranchi instead of crediting back the amount of Rs.100.01 crores to saving bank account of Jharkhand Rajya Madhayan Bhojan Pradhikaran from the office/suspense account of the said branch, with the gross negligence and without applying due diligence dishonestly abusing his official position as a public servant authorized the transfer of almost entire amount to the current account no.36310149578 of M/s. Bhanu Construction. Shri Sanjay Kumar Tiwary and Shri Suresh Kumar, both partners of M/s. Bhanu Construction dishonestly transferred the said amount to their various accounts and misappropriated the same by keeping it as liquid security/margin for the credit facility extended to

them by Axis Bank Limited, Ashok Nagar Branch, Ranchi, HDFC Bank Ltd., Ashok Nagar Branch, Ranchi SREI Equipment Finance Ltd., Ranchi, Cholamandalam Investment and Finance Co. Ltd., Ranchi. It was also revealed that out of 100.01 crores, the SBI, Hatia Branch, Ranchi had managed to recover a sum of Rs.76,29,13,000/- till 20.11.2017 from the various accounts with different banks and Rs.23,72,28,016/- could not be restored from M/s. Bhanu Construction resulting wrongful loss to the State Bank of India, Hatia Branch, Ranchi corresponding wrongful gain to M/s. Bhanu Construction. It was also revealed that Shri Sanjay Kumar Tiwary, one of the partners of M/s. Bhanu Construction firm had purchased large number of vehicles out the alleged proceeds of the crime during the period from August, 2018 to September, 2018. The amount so cheated had been siphoned off by layering through fictitious entities and opening multiple bank accounts and projected the same as untainted property. As such, the possibility of cheating and laundering the funds in that way cannot be ruled out.

5. Charge-sheet bearing no.04 of 2019 dated 26th June, 2019 filed by the Inspector, C.B.I., A.C.B., Ranchi before Spl. Judge, C.B.I., A.C.B., Ranchi against Sanjay Kumar Tiwary, Ajay Oraon, Suresh Kumar, M/s. Bhanu Construction, a partnership firm. As per charge-sheet, the proceeds of the crime was Rs.19,60,17,457/-. It is also further alleged that in the individual account of partner Suresh Kumar on 04.09.2017 an amount of Rs.7,29,674/- was deposited in his HDFC bank A/c No.50100167868301 maintained at HDFC Bank, Ranchi and that bank account was solely operated by Suresh Kumar. The amount of Rs.316448290/- was deposited in the account of M/s. Bhanu Construction, a partnership firm from 11.08.2017 to 11.09.2017 in

different bank accounts of the said firm. The rest of the amount was deposited in the account of UTS Infratel Private Limited, Naushad Ashdque and Naba Durga Private Construction Ltd. Orissa. It is also further alleged that approximately Rs.15 crores has been spent in purchasing all the 53 vehicles.

6. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case with object to humiliate him on being arrested by the E.D. officials. It is further submitted that from the F.I.R. as well as the charge-sheet which was filed by CBI/ACB, Ranchi it is shown that the applicant is not the signatory of the alleged account of M/s Bhanu Construction maintained at S.B.I. Hatia Branch, Ranchi, rather it was Sanjay Kumar Tiwary, who was the sole signatory of the alleged account of the said firm and the applicant has no role in transferring the alleged amount from any account either of himself or any other person. So far as the alleged transferred amount of Rs.7,29,674/- from the account of M/s Bhanu Construction is concerned, the same has already been returned by the applicant to the account of M/s. Bhanu Construction, a partnership firm on 27.09.2017. A copy of the bank statement to that effect is made part of the bail application. It is further submitted that in the charge-sheet filed by the A.C.B., it is shown that the role of the applicant Suresh Kumar in the conspiracy was negligible and, therefore, he was not charge-sheeted. A copy of the charge-sheet is made part of the bail application. It is also submitted that since the applicant was not charge-sheeted in the scheduled offence, as such, no offence is made out against this applicant under the alleged Sections 2/3 of the Act, 2002. Learned counsel for the applicant in support of his contention relied upon a judgment of Hon'ble Apex Court passed in the

case of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others*** reported in ***2022 SCC OnLine SC 929***.

7. Learned counsel for the E.D. vehemently opposed the contentions made by the learned counsel for the applicant and contended that certainly in the scheduled offence, the charge-sheet was not filed against the applicant and it is shown therein that the role of the applicant was negligible since the amount was transferred in his own account and same was retransferred in the account of M/s Bhanu Construction, a partnership but the charge-sheet was also filed against the said firm and this fact is not denied that the applicant was not the partner of the said firm. As such, he was getting the profit of the firm being a partner and the proceeds of the crime which had gained by the firm in unlawful manners were also gained by the applicant not in individual capacity but as a partner of the said firm. Therefore, he cannot evade from the liability being a partner of the said firm. It is further submitted that there is no reason to believe that he has been falsely implicated in this case.

Learned counsel for the E.D. relied on paragraphs nos. 251, 253, 268, 269, 270, 282, 284, 371, 401, 402, 408 and 417 of ***Vijay Madanlal Choudhary's (Supra)*** case.

8. I have heard the learned counsel for the parties and perused the materials available on record.

For disposal of this bail application, the following provisions of the Act, 2002 are being reproduced as under:-

Section 2(p) of the **Act, 2002** provides:-

“(p) “money-laundering” has the meaning assigned to it in Section 3.”

Sections 2(y) of the **Act, 2002** provides:-

“(y) “scheduled offence” means –
(i) the offences specified under Part A of the Schedule; or

[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or
(iii) the offences specified under Part C of the Schedule;]"

Sections 3 and 4 of the Act, 2002 provides 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 [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.

4. Punishment for money-laundering. – Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

Section 45 of the Act, 2002 provides as under:-

"45. Offences to be cognizable and non-bailable.—(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, [or is accused either on his own or alongwith other co-accused of money laundering a sum of less than one crore rupees] may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in 5 [***] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

9. The E.D. had recorded the statement of applicant—Suresh Kumar under **Section 50** of the **Act, 2002** on 13.07.2021 and 14.07.2021. In his statement he had stated that a partnership firm, namely, Bhanu Construction was opened in the year 2016 and he was one of the

partners of the M/s Bhanu Construction. He further stated that the accounts of said firm was being operated by Sanjay Kumar Tiwary and he was authorized signatory for all account of M/s. Bhanu Construction. The account no.36310149578, S.B.I. Hatia Branch, Dhurwa was opened in the name of M/s Bhanu Construction in the year 2016 and Sanjay Kumar Tiwari was the authorized signatory of the said account. He further stated that he received a phone call from Ajay Oraon and Panna Lal, SBI Hatia Branch regarding the transaction of Rs.1000141016/- crores in the account of M/s. Bhanu Construction by mistake and this matter was discussed between Sanjay Kumar Tiwari and him and it was decided that they would not attend any kind of communication with SBI Hatia Branch, Dhurwa and they decided to divert the said amount to various account of M/s. Bhanu Construction and others for expansion of business of construction work. Out of that amount "53 numbers of the vehicles were purchased in the name of the M/s. Bhanu Construction". Further he stated that he had received an amount of Rs.7,29,674/- and on 04.09.2017 in his personal account and re-transferred the same on 27.09.2017 in the account of M/s. Bhanu Construction. As per agreement of partnership firm of Bhanu Construction dated 16.12.2014, the ratio of profit/loss of Shri Sanjay Kumar Tiwary was 85%; while of applicant Suresh Kumar was 15%.

10. From perusal of record, it is also found that approximate an amount of Rs.18.5 crores has been spent in purchasing 53 vehicles in the name of M/s. Bhanu Construction.

11. Annexure-4 is Final Report under Section 173 Cr.P.C. filed before the Special Judge, CBI, Ranchi in RC12(A) 2017-R dated 05.12.2017. From perusal of the same, it is found that in this charge-sheet it is

mentioned in serial no. 12(xv) that "Suresh Kumar did not sign any instruments and did not get the financial benefit out of illegal transfer of money to the account of M/s. Bhanu Construction. As such, his role in the conspiracy becomes negligible."

12. Admittedly in the schedule offence, the charge-sheet was not filed against the present applicant Suresh Kumar; but in the aforesaid case the allegations in regard to the alleged offence are made against M/s. Bhanu Construction, a partnership firm. Admittedly the applicant was and is the partner of Bhanu Construction firm. **As per statement of Suresh Kumar his share in the said firm was 15%; while the share of co-accused Sanjay Tiwary was 85% in the profit and loss of the firm and this applicant in his capacity of partner of that firm was also involved in transferring the aforesaid amount which was gained by way of crime in the account of M/s. Bhanu Construction and also to other several accounts.**

13. Herein following provisions of the **Indian Partnership Act, 1932** are being reproduced:-

"2(a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

4. Definition of "partnership", "partner", "firm" and "firm name"— "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name".

6. Mode of determining existence of partnership.—In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.

25. Liability of a partner for acts of the firm.— Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

14. Since the applicant was partner of M/s. Bhanu Construction, a partnership firm and he was also very much aware in regard to the transfer of the alleged amount in the account of M/s. Bhanu Construction and the alleged amount was also laundered by applicant along with another partner Sanjay Tiwary, who was the authorized signatory of the firm on behalf of the applicant also.

15. In view of the statement of applicant under **Section 50** of the **Act, 2002**, it cannot be denied that he was not involved in the alleged offence. The applicant was not the dormant partner of the firm, rather he had actively participated on behalf of the firm in commission of the alleged offence being in direct contact with another partner Sanjay Kumar Tiwary. In view of the **Section 25** of the **Indian Partnership Act, 1932** every partner of a firm is jointly along with other partners and also severally liable for all acts of the firm done, while he is a partner. Therefore, even if the charge-sheet was not filed against the applicant in the scheduled offence in individual capacity; but substantially and materially the allegations are against M/s. Bhanu Construction firm and the authorized signatory Sanjay Kumar Tiwary against whom the charge-sheet was filed in the scheduled offence being in individual capacity also. But for the act of the firm both partners

are liable and it cannot be accepted that the applicant Suresh Kumar was not involved in the alleged offence.

16. The Hon'ble Apex Court in the case of *Parvathi Kollur & Anr. Vs. State By Directorate of Enforcement* reported in *2022 Livelaw (SC) 688* has held that the prosecution under PMLA, 2002 not possible after the accused is acquitted in relation to the scheduled offence or is not charge-sheeted in the scheduled offence. The reliance was made on the landmark case of constitutional Bench of Hon'ble Apex Court in *Vijay Madanlal Choudhary's (supra)* case.

17. The applicant cannot be given benefit of the aforesaid case law of Hon'ble Apex Court. In the case in hand, though the charge-sheet was not filed in individual capacity against the applicant but all the allegations are against the M/s. Bhanu Construction, a partnership firm and the applicant is the partner of the said firm and he is jointly and severally liable for the act of the said firm.

18. The Hon'ble Apex Court in *Vijay Madanlal Choudhary's (supra)* case in paragraphs 269, 270, 282 and 284 has held as under :

"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled

offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

19. The Constitutional Bench of Hon'ble Apex Court in *Vijay Madanlal Choudhary's (supra)* case also upheld the constitutional validity of **Amendment Act No.13 of 2018** in **Section 45(1) of PMLA, 2002**.

As such the provisions of twin conditions of Section 45(1) of the said Act are equally applicable while considering the anticipatory bail application under the PMLA, 2002.

20. The anticipatory bail is nothing; but a bail granted in anticipation of arrest, hence it has been held in various judgments by Hon'ble Apex Court that the principles governing the grant of bail in both cases are

more or less on same footing. Thus ordinarily anticipatory bail is granted in the exceptional cases where the accused has been falsely implicated in an offence with a view to harass and humiliate him. Therefore it would not be logical to disregard the limitation imposed on granting bail under Section 45 of the 2002 Act, in case of anticipatory as well.

The Hon'ble Apex Court in the case of ***P. Chidambaram vs. Directorate of Enforcement*** reported in ***(2019) 9 SCC 24*** observed that power of anticipatory bail should be exercised sparingly in economic offences.

The Hon'ble Apex Court in the case of ***Directorate of Enforcement vs. Ashok Kumar Jain*** reported in ***(1998) 2 SCC 105*** has held that power under Section 438 of Cr.P.C. being an extraordinary remedy, be exercised sparingly; moreso in cases of economic offences. Economic offences stand as different class as they affect the economic fabric of the society. In economic offences, the accused is not entitled to anticipatory bail.

21. The Hon'ble Apex Court in the case of ***YS Jagan Mohan Reddy vs. C.B.I.*** reported in ***2013 (7) SCC 439*** has held as under :-

"34. 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."

22. The Hon'ble Apex Court in the case of ***State Of Gujarat vs. Mohanlal Jitamalji Porwal and Ors.*** reported in ***1987 (2) SCC 3645***

has held as under:-

".....5. 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.....”

23. In view of the submissions made and materials available on record, the plea raised by the learned counsel for the applicant is not accepted that the applicant was not involved in commission of the alleged offence, rather in capacity of a partner of M/s. Bhanu Construction his involvement is prima facie made out and there are reasonable grounds for believing that he has committed the aforesaid offence and is likely to commit offence, if enlarged on bail.

24. Accordingly, the applicant's prayer for anticipatory bail is, hereby, rejected.

(Subhash Chand, J.)