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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**RESERVED ON -28.08.2023
PRONOUNCED ON -22.09.2023**

+ BAIL APPLN. 2341/2023

MANISH KOTHARI (PRESENTLY IN JC)

..... Petitioner

Through: Mr. Yogesh Jagai, Mr. Amit Sood,
Mr. Bharat Sharma, Mr. Chandan
Dutta, Mr. Hriday Minocha and Mr.
Aditya Jagia, Advs.

versus

DIRECTOR OF ENFORCEMENT MINISTRY OF FINANCE
DEPT. OF REVENUE HEADQUARTER INVESTIGATION UNIT

..... Respondent

Through: Mr. Anupam S. Sharrma, Special
counsel for ED with Ms. Harpreet
Kalsi, Mr. Prakash Airan, Mr.
Ripudaman Sharma, Mr. Abhishek
Batra and Mr. Vashisht Rao, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. Present petition has been filed under Section 439 r/w Section 167(2) AND Section 482 of Cr.P.C. for grant of bail in CT Case No. 13/2022-ECR/KLZ0/41/2020 dated 25/09/20 under Prevention of Money Laundering Act 2002.



2. The petitioner is aggrieved of the order dated 09.06.2023 whereby the bail application of the petitioner has been dismissed by the learned Special Judge primarily on the ground that the petitioner has failed to meet the threshold of Section 45 of PMLA. Learned trial court has inter alia held that the petitioner has actively assisted the co-accused to convert the tainted money into untainted money and connived in the laundering thereto.
3. The learned trial court has also inter alia held that the present case being a serious economic offence stands on a different footing and thus required to be seen with a different perspective. Learned trial court also inter alia rejected the contention of the petitioner that the share of the applicant/accused out of the alleged tainted money was only to the extent of Rs.27-28 lakhs and hence the applicant/accused was to be treated on a different footing in terms of the proviso clause appended to Section 45 of the PMLA. The ld. trial court was inter alia of the view that at this stage, the court cannot segregate the share of individual person and it has to be seen in a wholesome manner and therefore, the role of applicant/accused touches at least a figure of Rs. 48 Crores or so which is the amount allegedly attributed to the co-accused persons namely Anubrata Mondal and his daughter Sukanya Mondal.
4. Learned Special judge also rejected the plea taken by the petitioner that the grounds of arrest were not supplied to him. Aggrieved of this, the petitioner has filed the present bail application. Learned counsel for the petitioner has submitted that the petitioner is a law-abiding citizen with no criminal antecedents and permanent resident of Sriniketan Road,



Bolpur, Birbhum, West Bengal-731204. It has been submitted that the petitioner is a qualified and practicing chartered accountant since November, 1999 and has maintained a clean practice record. It has further been submitted that the petitioner had been rendering his services to various companies, firms, proprietorship and partnership and individuals and has also been appointed as statutory auditor under Section 139 of the Companies Act of approximately 19 companies.

5. Learned counsel has submitted that the petitioner, in ordinary course of his professional activities, came in contact with Mr. Anubrata Mondal in late 2017 on being approached by the latter and subsequent thereto effective from financial year 2017-2018, started providing professional services of computation of income, filing of income tax returns for him and his family members including Ms. Sukanya Mondol. The petitioner received his professional fee against the discharge of his service. Learned counsel for the petitioner submits that prior to the petitioner G.G. & Company, Chartered Accountants were rendering the same service upto financial year 2017-18. Learned counsel has submitted that in compliance of statutory obligations, petitioner, being an auditor is mandated under the law to audit and submit his report under Section 145 of Companies Act, 2013 and under Section 44AB of Income Tax Act, 1961 for the purpose of tax audit. It has been submitted that these reports are required to be submitted within time as prescribed by law. Since corporate entity are mandated to hold annual general meetings upto 30th September for closing of financial year



therefore auditors are required to submit their report on or before 30th September.

6. Learned counsel submits that if the petitioner is not released on bail, he would not be able to submit the mandated audit report which would result not only in losing the clients permanently but also will ruin his career. Learned counsel has submitted that the petitioner is not an accused in the predicate offence. It has been submitted that petitioner had regularly appeared before the ED as and when called and his statement under Section 50 of PMLA was recorded. Learned counsel has submitted that the petitioner was arrested on 14.03.2023 and even after his arrest, his statement was again recorded between 14.03.2023 to 19.03.2023. Learned counsel has submitted that now the prosecution complaint has already been filed and therefore investigation qua the petitioner has come to an end.
7. Learned counsel for the petitioner has submitted that the period of predicate offence is from 19.12.2015 to 22.04.2017 whereas the petitioner admittedly came in contact of Anubrata Mondal after this period and upon his request, he then started providing financial (audit, etc) services. Learned counsel submits petitioner duly fulfills the twin conditions under Section 45 of PMLA as he has not committed any scheduled offence under Section 2 (x) which is a condition precedent for invoking the provision under PMLA Act.
8. Learned counsel submitted that the petitioner, being a chartered accountant, was only involved in ITR filing of Anubrata Mondal and the members of his family on the instructions of Anubrata Mondal and



the same was admitted by Anubrata Mondal in his statement under Section 50 of PMLA dated 12.03.2023.

9. Learned counsel has submitted that Anubrata Mondal has also admitted in his statement dated 09.03.2023 that he himself was managing all business. Learned counsel for the petitioner has submitted that on 20.03.2023 also Mr. Anubrata Mondal stated it was he who deposited the cash in bank accounts. However, later on Mr. Anubrata Mondal shifted the onus on petitioner as he was his chartered accountant and supplemented the same with a complaint dated 04.05.23.
10. Learned counsel submitted that in prosecution complaint dated 04.05.2023 it was concluded that Mr. Anubrata Mondal and the members of his family are beneficiaries of all the transactions. Learned counsel has submitted that Mr. Anubrata Mondal in his statement admitted that at his directions, the directors were appointed in his companies and he was the sole authority who was looking after the entire business. Learned counsel has invited the attention of the court to the statement of Mr. Anubrata Mondal dated 19.03.2023 wherein he has stated that he gave Rs.50,000/- per month in cash for professional service and the same has been deemed as proceeds of crime for the petitioner for which provisional attachment has been made of the properties of the petitioner worth Rs.26,15,000/-. Learned counsel has submitted that there is no evidence of any nature which could attribute section 3 of the PMLA and the entire case of the prosecution is rests upon statements of Mr. Anubrata Mondal and Ms. Sukanya Mondol recorded u/s 50 of PMLA Act 2002 which have inherent contradictions.



Learned counsel for the petitioner submitted that even the statement recorded under Section 50 of PMLA Act 2002 have been recorded after arrest and same are inadmissible in evidence being hit by Article 20(3) of Constitution of India.

11. The bail application has been opposed by the ED. Mr. Anupam S. Sharma, learned Special counsel has submitted that that investigation conducted by the ED has revealed that the petitioner had been managing the finances of co-accused Anubrata Mondal and his family members with regards to proceeds of crime which were received by them as patronage for providing protection to the illegal business of cross-border cattle smuggling. As per the ECIR, out of the total amount of proceeds of crime laundered by all accused persons of Rs. 77.56 crores (approx.), those pertaining to petitioner stood at approx. Rs. 48,06,13,047/- was held by the Anubrata Mondal, Sukanya Mondal, their family members and co-accused entities. It is submitted that the said amount was projected and claimed as untainted property by the Petitioner who was their Chartered Accountant and purchased huge properties, created benami assets and companies for laundering of proceeds of crime, besides ensuring cash deposits in the companies and their personal accounts.
12. It has further been submitted that, in their statement's u/s 50 PMLA, co-accused Anubrata Mondal and Sukanya Mondal, upon being asked about their financials, stated that the Petitioner herein was like a family member and was looking after their financials and they were not aware of the same. Similarly, he was also managing the finances of Sehegal



Hossain who is the personal bodyguard of co-accused Anubrata Mondal along with Kamal Kanti Ghosh i.e. brother-in-law of Anubrata Mondal, Shibani Ghosh i.e. sister of Anubrata Mondal and, Bidyut Baren Gayen and Biswajyoti Banerjee who were the household help of Anubrata Mondal.

13. Learned counsel for ED has further submitted that investigation has revealed that the perusal of the ITR's of Bidyut Baren Gayen and Biswajyoti Banerjee for the A.Y. 2017-18 and onwards reported huge income from business. However, during their respective examinations under 50 PMLA, they were unable to explain the source and instead, stated that the said ITR's were filed by Petitioner herein and they would only append their signature as and when instructed to do so. It is submitted that the ITR's so filed indicated income under the heads of transport and logistics business, house property income, capital gains and agricultural income. Petitioner admitted that he was very well aware of the fact that both Bidyut Baren Gayen and Biswajyoti Banerjee were only employees working in the house of Anubrata Mondal. It is submitted that thus, by showing exorbitant income figure in the ITs of said individuals, he was in fact concealing the proceeds of crime of Mondal family.
14. It was further submitted by the learned counsel for the ED that the petitioner was instrumental in the acquisition of two companies by Mondal family namely M/s ANM Agrochem Pt Ltd. and M/s Neer Developers Pvt Ltd. through which the proceeds of crime were laundered and projected as business income. Learned counsel has



submitted that, in fact, Anubrata Mondal has stated that Petitioner was filing the IT's since 2013-2014 and he could give purchase details of both companies and Anubrata Mondal did not know about the business activities of the said companies as the Petitioner was looking after them.

15. Mr. Sharma, learned special counsel for ED has submitted that in fact the sale of Agrochem was negotiated by the petitioner and in both the companies Bidyut Baren Gayen was made Director cum Shareholder. It was pointed out that Bidyut Baren Gayen was working as household help for Anubrata Mondal and drawing a salary of Rs.15,000 to 20,000/- per month and had no knowledge about this. Learned counsel for ED has further submitted that Neer was owned by Soumen Sarkar, Petitioner herein, their family members and friends. However, in 2018, the said company was sold by Petitioner and others to Sukanya Mondal and Bidyut Baren Gayen, who had acquired the shares of the said company from proceeds of crime. On the request of Petitioner, Manoj Mahnot (a distant relative of Petitioner) provided accommodation entries in lieu of cash to Mondal family companies and Sehegal Hossain. He stated that he paid Rs. 19,00,000/- for acquiring Neer by Sukanya Mondal and Bidyut Baren Gayen on instructions of Petitioner, besides accommodation entries in other companies as well. It is submitted that a total cash of Rs. 12,80,98,237/- was deposited in the bank accounts of Anubrata Mondal and his family which was neither explained by Anubrata Mondal nor Manish Kothari.



16. Learned counsel for ED has submitted that the business of M/s Bhole Bom Rice Mill, M/s Shiv Shambhu Rice Mill, M/s Maa Kali Traders and the funding of M/s Shiv Shambu Rice is from tainted money and the money was routed through various bank accounts after receiving cash through various accounts into the bank accounts of Mondal family and other concerned businesses were created in the name of benamidars and as per Anubrata Mondal, the business transactions and activities were taken care by the Petitioner who could not explain the same.
17. Learned counsel has submitted that Petitioner herein also filed the ITR's for Smt. Latifa Khatun who was the mother of Sehegal Hossain for AY 2017-18 onwards and Smt. Somaiya Khandokar who was the wife of Sehegal Hossain for AY 2016-17 onwards. Both of them were unable to explain the sources of income reported in their ITs which revealed the active role of Petitioner herein in aiding co-accused persons to launder proceeds of crime and projecting it as a genuine source of income in IT filed. It is further submitted that the initial ITR's of Smt. Latifa Khatun for AY 2017-18 & 2018-19 and Smt. Somaiya Khandokar for AY 2016-17 & 2017-18 was filed belatedly, which is evidently an afterthought to launder the proceeds of crime collected from schedule offence of Sehegal Hossain and his family members.
18. Learned special counsel for ED has submitted that the offence alleged against the accused is money laundering under Section 3 of PMLA. It has been submitted that under Section 3 of the PMLA, it is attributed that if there is a direct or indirect attempt to indulge or knowingly assist or being knowingly 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.’ Reliance has been placed on *Vijay Madanlal Chaudhary & Ors. v. Union of India & Ors.* SLP (Criminal) 4634 of 2014; *Benoy Babu v. Directorate of Enforcement* 2023 SCC OnLine Del 3771 (Para 34 & 52); *Vijay Nair v. Directorate of Enforcement* Bail Appln. 1178/2023 (Para 45 & 53); *Abhishek Boinapally v. Directorate of Enforcement* Bail Appln. 906/2023.

19. Learned counsel further submitted that the economic offences are considered to be gravest offence against the society at large and hence are required to be treated differently.
20. Arguments considered.
21. As per the law laid down that in *Vijay Madanlal Choudhary (Supra)*, it has inter alia been held that at the stage of considering the bail application, the court is expected to consider the question from the perspective of whether the accused possessed the requisite *mens rea*. It was further held that no definite finding is required whether the accused has not committed an offence under the Act. It is a well settled proposition of law that the jurisprudence of bail lays down that the liberty of a person should not be interfered with except in exceptional cases. At this stage, the court has to examine the case on the scale of broad probabilities.
22. In *Sanjay Pandey v. Directorate of Enforcement* 2022 SCC OnLine Delhi 4279, bail was granted on the principles of broad probabilities.



In *Ranjit Singh Brahamjeet Singh Sharma v. State of Maharashtra* (2005) 1 SCR 876, it has *inter alia* held as under:

“38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the *sine qua non* for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.”

23. In *Mohd. Muslim @ Hussain vs. State (NCT of Delhi)*, 2023 SCC OnLineSC 352 it has further *inter alia* been held as under:

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any



offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. ... In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonable see whether the accused’s guilt may be proven. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

24. This Court is conscious of the fact that **Ranjit Singh Brahamjeet Singh Sharma** was a judgment on Section 21 (4) MCOCA and that **Mohd. Muslim @ Hussain** was a judgment on Section 37 of NDPS Act but the proposition as laid down the Apex Court is squarely applicable on the facts of the present case



25. It is an admitted case that the petitioner herein was a chartered accountant of Anubrata Mondal. The case of the ED is that present petitioner was instrumental in projecting the tainted money as untainted money. The apparent role of the petitioner is filing of the income tax return. It is a settled proposition that at the stage of consideration of the bail even under PMLA the court has only to see the preponderance of probability. The court at this stage is not required to record the positive finding of acquittal. Such finding can be recorded only after recording and appreciation of the evidence by the learned trial court. The case of the petitioner that Anubrata Mondal is shifting his blame on the petitioner only to save himself has to be tested during the course of the trial. Generally speaking, the professional would act on the instructions of his client. However, whether he has gone beyond his professional duty is something which is required to be seen and examined during the trial. The allegation against the present petitioner is not that he has done something which was beyond his scope of profession i.e. indulging in some activities which are totally unconnected with the chartered accountancy. The plea of the petitioner that he has acted on the basis of information and record provided to him cannot be rejected outrightly at this stage. This is required to be tested during the course of the trial.
26. Any further appreciation of the evidence at this stage may prejudice the case and therefore is not expected. It has repeatedly been held that stage of bail cannot convert into a mini trial. It is also pertinent to



mention here that that the court has only to take a prima facie view on the basis of the material on record.

27. In the facts and circumstances, the petitioner is admitted to bail on furnishing personal bond in the sum of Rs.5 lakhs with a surety of the like amount to the satisfaction of the trial court on the following terms and conditions:

1. The petitioner shall surrender his passport before the learned Trial Court and shall not leave the country without prior permission of the learned trial court.
2. The petitioner shall ordinarily reside at his place of residence and keep his phone operational at all times. He shall immediately inform in case of change in the address by way of an affidavit, to the investigation officer.
3. The petitioner shall appear and attend before the Court/Investigating Agency as and when required;
4. The petitioner shall provide his mobile number to the Investigating Officer (IO)/ Court concerned at the time of release.
5. The petitioner shall not directly or indirectly communicate or visit co-accused persons or the witnesses or offer any inducement, threat or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.
6. The petitioner shall not indulge in any criminal activity during the bail period.



28. In view of the above, the present bail application along with pending applications stands disposed of. However, no expression made herein shall tantamount to be an expression on the merits of the case.
29. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.
30. The petition stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 22, 2023

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