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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13.12.2019

Pronounced on. 14.01.2020

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CRL.M.C. 6466/2019 & CrI.M.A.42700/2019

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through Mr.K.M. Nataraj, ASG with Mr.Amit
Mahajan, CGSC

versus

RATUL PURI

..... Respondent

Through Mr.Kapil Sibbal, Mr.Abhishek Manu
Singhvi, Mr.Vikas Pahwa, Sr. Advs.
with Mr.Vijay Aggarwal, Mr.Mudit
Jain, Mr.Ayush Jindal, Ms.Barkha
Rastogi, Mr.Deepanshu Choithani,
Mr.Vafee Haider, Mr.Varun Chopra,
Mr.Sumer Bopari, Mr.Ansh Kukreja,
Mr.Yugant Sharma, Mr.Hardik
Sharma, Mr.Akshay Gadeock,
Mr.Rudrashish Bhardwaj & Mr.Sahil
Goyal, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition , the petitioner seeks direction thereby to set aside the order dated 02.12.2019 passed by Ld. Special Judge, PMLA in

ECIR/DLZO/15/2014/AD(VM) granting bail to the Respondent and consequentially cancel the same.

2. Brief facts of the case are that on 12.02.2013, Ministry of Defence, Govt. of India filed a complaint to CBI, New Delhi for registration of case and to investigate the unethical dealings of M/s Finmeccanica, Italy and payment of kickbacks to influence the contract for procurement of 12 VVIP/VIP Helicopters by Indian Air Force, Ministry of Defence, Govt. of India from M/s Agusta Westland International Limited, UK, a subsidiary of M/s Finmeccanica, Italy. Accordingly, CBI registered a case FIR vide RC No. RC- 217 2013 A 0003 dated 12.03.2013 for commission of offences punishable u/s 120-B r/w 420 of IPC and Sections 7,8,9,12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Since the said offences are scheduled offences under the Prevention of Money Laundering Act (PMLA) and since the case involved generation of proceeds of crime, ECIR DLZO/15/2014/AD(VM) was registered on 03.07.2014 and investigation was initiated by the Petitioner department. On 20.11.2014, a Prosecution Complaint arraying Gautam Khaitan, Ritu Khaitan, Gerosa Carlo Valentino Ferdinand, Haschke Guido Ralph & M/s Aeromatrix Info Solutions Pvt. Ltd. accused for commission of offences u/s 3, punishable u/s 4 of PMLA 2002

was filed and cognizance was taken by the Ld. Special Judge. On 10.06.2016, 1st supplementary complaint was filed wherein Christian Michel James, Media Exim Pvt. Ltd., R.K. Nanda and J.B. Subramanian were arrayed as Accused for money laundering and the Ld. Special Judge was pleased to issue process against the Accused on 30.11.2016, while further investigation in the instant case continued.

3. Thereafter, on 13.09.2017 2nd Supplementary complaint arraying Shivani Rajiv Saxena, Matrix Holding Pvt. Ltd. and UHY Saxena Dubai as Accused for the offence of money laundering was filed. Thereafter, after considering the material available on record and the submissions of the Petitioner, the Ld. Special Judge was pleased to issue process against the Accused on 19.09.2017 and investigation in the instant case continued.

4. On 17.07.2018 3rd Supplementary Prosecution complaint arraying various other Accused was filed and process was issued against the said Accused on 24.07.2018, while further investigation continued.

5. The Accused Christian Michel James was extradited from the UAE on 04.12.2018 and certain crucial aspects of the case came to light after his arrival, Thereafter, Rajiv Saxena was deported from the UAE on 31.01.2019 and further investigation revealed certain crucial aspects of the case.

6. Accordingly, on 04.04.2019, 4th Supplementary Prosecution Complaint was filed before the Ld. Special Judge against various Accused persons, on which process was issued, while further investigation continued.

7. Thereafter, 5th Supplementary Prosecution Complaint was filed before the Ld. Special Judge on 22.05.2019 against various Accused persons, on which process was issued, while further investigation continued, including against the Respondent herein.

8. Further case of the petitioner department is that prior to the deportation of Rajiv Saxena, though there were apprehensions of the involvement of the Respondent herein, summons were served on the Respondent to investigate into the matter and primarily, documents were sought in this regard. Once the role of the Respondent became apparent post the deportation of Rajiv Saxena and the arrest of Sushen Mohan Gupta, he was summoned to join investigation. On 26.07.2019, though he appeared before the Petitioner, however, he chose to leave the said proceedings midway.

9. Mr. Nataraj, learned Additional Solicitor General appearing on behalf of the petitioner department submitted that it is a matter of record that the respondent was posed few difficult questions during his interrogation and

informed that he was required to be taken to the Income Tax Department for cloning of his phone data. The Respondent thereafter became untraceable and despite the best efforts of the Petitioner, his whereabouts could not be ascertained. The very next day, an Anticipatory Bail Application was moved by the Respondent and he then appeared before the Petitioner under the protective umbrella of an interim Anticipatory Bail order. Thereafter, the Respondent further failed to join investigation and did not comply with the summons dated 28.07.2019, 30.07.2019, 31.07.2019. Sh. Navin Kapila, in response to the summons, sent an email stating that Respondent cannot join investigation, being busy in his bail matter. Once the Anticipatory Bail Application of the Respondent was dismissed by the Ld. Special Judge (PMLA) vide order dated 06.08.2019, he again became incommunicado and did not comply with the summons dated 06.08.2019 and 07.08.2019. In light of such a conduct, Ld. Special Judge (PMLA) was pleased to issue NBWs against him on 09.08.2019. Thereafter, the Respondent was granted interim protection from arrest by this Court on 14.08.2019, which protection stood vacated on 20.08.2019 and consequently his application was dismissed, wherein the this Court duly noted the influence of the Respondent on the witnesses. In the meantime, the Respondent was arrested in case

ECIR/07/DZCR/2019 on 19.09.2019 by the petitioner's department. Having blatantly evaded the process of law, the Respondent thereafter tried to create a facade of alleged cooperation by surrendering before the Ld. Special Judge (PMLA), only after his arrest in the said case, which fact of surrender after arrest in another case is duly recorded in the order dated 29.08.2019 passed by the Ld. Special Judge (PMLA). During the said period, the Application for cancellation of the NBWs against the Respondent was also dismissed by the Ld. Special Judge (PMLA) vide order dated 21.08.2019. Thereafter, the Respondent was arrested by the Petitioner in the instant case on 04.09.2019. Even after his period of ED remand, the Respondent was interrogated in Tihar Jail on 22.10.19, 23.10.19, 31.10.19 after seeking permission from the Ld. Special Judge.

10. Thereafter, 6th Supplementary Prosecution Complaint was filed by the Petitioner on 02.11.2019 and the Ld. Special Judge was pleased to issue process against the Respondent and others vide order dated 02.11.2019, while further investigation continued. The said Prosecution Complaint duly highlighted the role of the Respondent in the commission of the offence of money laundering and further investigation is still ongoing.

11. Learned Additional Solicitor General further argued that clinching evidence has come on record to show the complicity of the Respondent in the instant case. Investigation has revealed that the Respondent has made all possible attempts to influence/intimidate the witnesses in the investigation and hamper the investigation of the instant case, apart from the destruction/disposal of crucial evidence. The Respondent made his wife take a flimsy ground of not joining the investigation citing the medical condition of the father of the Respondent, which is further fortified by the records collected during investigation of the case. He further made her lie about their proximity and asked her not to join investigation. Moreover, he took away the i-Pad of his wife, which is believed to contain crucial leads in the case, only to derail the investigation. The Respondent sent an email dated 15.07.2019 on behalf of his father stating that his father is bed ridden and cannot come to the office of the ED. At the same time, his father was in Dehradun celebrating his birthday. The Respondent, with the active aid of Niamat Bakshi, is involved in the hiding/destruction of crucial evidence of the case and had got burnt certain documents. The written instructions for the same apart from the ashes of the burnt documents have been recovered, which has, also been corroborated by the evidence adduced in this regard.

12. Further, investigation has revealed that Rajiv Saxena was influenced by the Respondent not to disclose that the payments received by him from Global Services FZE, and not to give any information/documents/ statement linking his father or his uncle in any matter. He further influenced/pressurized him to give selective/no information to the Petitioner. However, investigation has revealed that the Respondent was in touch with Rajiv Saxena, directly and also through his lawyers. Further, Sandeep Narang was approached by the Respondent and all attempts were made to influence him to not make the full and true disclosures before the Petitioner's department.

13. Mr. Nataraj, Additional Solicitor General further submitted that reliable intelligence inputs have further confirmed that there are a large number of documents/material related to the Respondent, which have been moved around in bags, which are believed to be containing crucial leads in the case and are still hidden, and the Petitioner is taking all possible steps to recover the same.

14. Further submitted that investigation has revealed that the claims and stands of the Respondent taken at different points of time are a mere eyewash to thwart the investigation of the case. Respondent has undertaken

to provide the relevant documents and information at various point of time, but the same have not been received till date. His answers to basic question were contrary to the records of the case. One such instance of the same pertains to the email ids nokiasamsung35@yahoo.com and nokiasamsung35@yahoo.co.uk, wherein the Respondent denied any association with the said email ids, but when confronted with emails wherein his footprints were evident, he recalls such transactions, while conveniently ignoring the other transactions. The said emails belong to the Respondent, as has been revealed by various independent sources and forms part of the Prosecution complaint and the same have been used in laundering the proceeds of crime.

15. Further, the Respondent has deleted the emails and the email ids of the nokia Samsung accounts, to thwart the investigation herein. During investigation, another email id of the Respondent came to light; i.e. idea4800@gmail.com, which email id has also been deleted on 14.02.2019, post the deportation of Rajiv Saxena, in a clear attempt to thwart the effective investigation of the case. It has also revealed that the Respondent has deleted another email id ratul.puril4@gmail.com on 23.04.2019 after the searches conducted by the Income Tax Department. Thus, there are reasons

to believe that the same have been self-deleted to thwart the investigation of the case by destroying the whole data, however, all efforts are being made to procure access to the same,

16. Learned Additional Solicitor General submitted that the Ld. Special Judge has granted bail to the Respondent, against the settled principles of law by not considering the contentions of the Petitioner. Thus, Ld. Special Judge has grossly erred in granting bail to the Respondent in the facts and circumstances of the case. The Legislature, by virtue of Section 45 PMLA has placed stringent conditions on the grant of bail in offences concerning money laundering. The said twin conditions only highlight the gravity of the offence and the menace sought to be curbed. By mechanically granting bail to the Respondent, the Ld. Special Judge has failed to appreciate the object of the PMLA. The non-applicability of Section 45 of PMLA, as adjudged by the Ld. Special Judge, is misplaced, in light of the Amendment of 2018 and 2019 to Section 45 of PMLA. While upholding the constitutionality of such provisions, one of the most important parameters has been the satisfaction of the twin tests of classification. A perusal of the analogous provisions in other statutes, it would be demonstrated that in all such statutes imposing the twin conditions for grant of bail, the said conditions existed for offences

punishable under the Act. Having addressed the said issue by way of the Amendment, the Legislature has brought the PMLA in consonance with the other Acts. Accordingly, keeping in mind the object of the Act and eliminating the discrimination being created because of the ambiguity, the Legislature has brought the said Section in consonance with the judgement of the Hon'ble Supreme Court and the Amendment as such stands to be legal. Further, keeping in mind the object of the Act and the huge amount of tainted money being laundered, the reasonable nexus is duly established.

17. It is further argued that Ld. Special Judge failed to consider the factors that are relevant for the granting of bail. The role played by the Accused persons and the gravity of the offence are relevant factors to be considered while granting bail. The Ld. Special Judge completely lost sight of the fact that the Respondent was linked to the laundering of the proceeds of crime generated in the case. Moreover, investigation is at a very crucial stage where the role of his accomplices/aides is being examined to derive the end use and the last mile connectivity of the money trail. Certain witnesses who have been identified, both in India and abroad, are in the process of being examined. Thus, there is a every likelihood that the Respondent may influence the witnesses, tamper with the evidence and

hamper with the investigation of the said case, especially in light of his past conduct. There is further a reasonable apprehension of crucial evidence being destroyed, as seen by the past conduct of the Respondent, which facts are in his personal knowledge.

18. Accordingly, in view of above facts, the learned Additional Solicitor General argued that investigation in the present case is still going on. The release of the Respondent on bail would adversely affect further investigation to unearth the deep-rooted multi-layered conspiracy and to identify all his accomplices and aides involved in the instant case, especially keeping in mind the nature of the case, severity of allegations and voluminous evidence on record. Certain witnesses have been identified are being examined. Thus, there is reasonable apprehension that he will try to liquidate and shift the proceeds of crime to different foreign jurisdiction/entities to destroy the money trail; apart from continuing to be involved in the commission of the offence of money laundering. There is a reasonable apprehension of his tampering with the evidence sought in those Letter Rogatories (LRs), the facts of which are in his personal knowledge.

19. On the other hand, Mr.Kapil Sibbal with Mr.Abhishek Manu Singhvi, learned Senior Advocates appeared on behalf of respondent submitted that

as per the case of the prosecution a contract for supply of 12 VVIP/non VVIP, helicopters was awarded to M/s Agusta Westland International Ltd., UK for an amount of Euro 556.262 million (3726.96 Crores) and an agreement to this effect was executed on 08.02.2010 between Ministry of Defence, Government of India and M/s Agusta Westland international Ltd. Co-accused S.P. Tyagi, during his tenure as Chief of Air Staff, during the period 2005 to 2007, accorded approval and with his approval, Air force conceded to service ceiling for VVIP helicopters to 4500 meters from its earlier stand of 6000 meters as mandatory operational requirements, in order to allow M/s Agusta Westland Intentional Ltd. into fray, though M/s Agusta Westland International Ltd., was disqualified in 2002. Since then, it was making attempt to enter the competition. It is also alleged that 3 cousins of Air chief Marshal S.P.Tyagi entered into a consultancy contract with M/s Gordian Services Sari, Tunisia in the year 2004. Mr. Bruno Spagnolini of M/s Agusta Westland International Ltd. started paying kickbacks to Mr. Guido Ralph Haschke and Mr. Carlo Valentino Ferdinando Gerosa under the guise of several consultancy contract executed between M/s Agusta Westland International Ltd. and M/s Gordian Services. The proceeds of crime was also routed through co-accused Christian Michel James. Later on,

money was also transferred to India through different companies and co-accused Gautam Khaitan had played vital role in facilitating transfer of illegal gratification to India.

20. Learned senior counsels submitted that the role of the respondent/accused has surfaced after deportation of Rajiv Saxena on 31.01.2019 from UAE and the arrest of Sushen Mohan Gupta and his concerned foreign entities, received proceeds of crime directly from Interstellar Technologies Limited and he had received funds from both the chains of money laundering involved in the present case. The accused, using the guise of shell companies in the name of others, accumulated proceeds of crime, which have been parked and later laundered to reach the desired beneficiaries including the accused amongst other. As per ED, the proceeds of crime has been deposited in the accounts of different companies owned by accused. As per allegations, the respondent Ratul Puri is a key link to unearth the modus operandi adopted by other accused persons and to determine last mile connectivity of the proceeds of crime in the instant case. As per ED, the diary of Sushen Mohan Gupta and emails recovered from Rajiv Saxena shows that accused was in receipt of proceeds of crime.

21. Further argued that petitioner/Enforcement Directorate filed its main complaint in November, 2014 and thereafter six Supplementary Complaints have been filed. However, the respondent has been named as an accused in the 6th supplementary complaint. The CBI has filed a final report in the above mentioned FIR and the respondent has not been named as an accused person. All persons who have been named as accused persons by the Enforcement Directorate in the present case are either on bail or have never been arrested.

22. Moreover, the respondent appeared before the petitioner firstly on 07.02.2019 and since then he has been joining investigation as and when called and has been interrogated thoroughly and large number of questions have been put to him to answer and his statement run into more than 1200 pages and he joined investigation for more than 27 times. He has cooperated during investigation and has stated the truth on oath, before the Enforcement Directorate, when he was examined by the petitioner department. The respondent neither refused to answer any question nor evaded thereto. Statements of the witnesses recorded under Section 50 of PMLA are to be tested during trial and are not credible evidence to deny bail. The petitioner cannot rely upon the statement of co-accused Rajiv Saxena recorded under

Section 50 (2) and (3) PMLA, 2002. The petitioner has itself filed an application for cancellation of bail of Rajiv Saxena on the ground that he has not disclosed the true and correct facts during investigation of the matter. The petitioner itself is not relying upon the statement of the said witness then how the statement of the said witness can be considered/relied upon for the purpose of cancelling the bail of the respondent. In addition, the statement recorded under Section 50 of PMLA is inadmissible if the same is recorded after arrest of the accused person. Even otherwise, disclosure statement of co-accused persons cannot be used against the respondent as their statements are inadmissible against him.

23. It is further argued that accused is not involved in dealing with proceeds of crime and the entire case of the petitioner is based on false allegations. The respondent has provided documents to the petitioner and since the supplementary complaint has already been filed qua respondent herein and statement of witnesses have already been recorded, there is no chance of tampering of evidence or influencing witnesses on the part of the respondent. Moreover, the petitioner has failed to link the accused with the proceeds of crime as Excel Sheets provided by Rajiv Saxena are not admissible in evidence and are easily modifiable document. The Casana

Sheets, prepared by an auditor also cannot be relied upon in the absence of bank statements of M/s Global Services FZE/Global Oil Services. The witnesses examined by petitioner has given contradictory statements and thus rightly not relied upon by the learned Special Judge. There is nothing on record to show that proceeds of crime were from Interstellar Technologies Ltd. and travelled to respondent's company. The allegations made against the respondent in the complaint filed by petitioner are contradictory and self destructive and are not worthy of reliance. The petitioner has filed incomplete supplementary complaint just to defeat the right of bail of accused under Section 167 (2) Cr.P.C., however, not relied upon by the learned Special Judge.

24. In addition to above, respondent is having roots in society and is an Indian resident. There is no apprehension of his absconding. There is no likelihood of accused tampering with evidence. He is an alumni of Carnegie Mellon University, the Pittsburg bases global research university with a Bachelors Degree in Computer Engineer, Mathematics and Computer Sciences. He is the Chairman of Board of Directors of Hindustan Power Projects. He has permanent abode in Delhi and is living with his family. There is no possibility of accused tampering with the evidence or

influencing the witness. He has about 21000 employees working in his organization. The exposure of the organization towards bank is to the tune of about Rupees Nine Thousand Crores which are being regularly serviced without any default.

25. Moreover, the respondent satisfies the triple test for bail and, accordingly, learned Special Judge, has rightly granted the bail to the respondent. The respondent is not a flight risk as he has roots in the society and there is no apprehension of influencing the witnesses as their statements have already been recorded and are part of judicial record and also there is no apprehension of tampering of evidence / documents as the documents have already been collected by multiple agencies.

26. In addition to above, the twin conditions of Section 45 (1) of PMLA are not applicable in view of judgment passed by Hon'ble Supreme Court in ***“Nikesh Tarachand Shah's case, AIR 2017 SC 5500*** wherein the Apex Court observed that *“the twin conditions of Section 45 (1) of PMLA are violative of constitutional provisions and struck down the said twin conditions of Section 45 (1) PMLA.”* Further submitted that offence under Section 3 & 4 of PMLA is offence punishable upto 07 years in view of

specific guidelines laid down by Hon'ble Supreme Court in case titled "***Arnesh Kumar vs. State of Bihar***" (2014) 8 SCC 273.

27. To strengthen his arguments, learned senior counsel for respondent has relied upon the cases of ***L K Advani & Ors vs CBI: 1997 JCC 294; CBI vs V. C, Shukla & Ors: 1998 (3) SCC 410; Common Cause and ors vs. UOI and Ors.: rendered in WP (Civil) No. 505/2015 dated 11.01.2017; Mohd. Akbar vs State of Chhattisgarh: 2006 SCC Online CHH-30; Sameer M. Bhujbai vs Assistant Director, Directorate of Enforcement in bail application no. 286/2018*** and other cases decided by the Hon'ble Supreme Court and the other High Courts. Hence, there is no ground in the present petition to interfere in the impugned order whereby the learned Special Judge has granted bail after completion of around 100 days in judicial custody.

28. In case of ***Dolat Ram and others vs. State of Haryana: (1995) 1 SCC 349***, it is observed by the Hon'ble Supreme Court that "very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the

due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

29. Similar situation came up before this Court in case of ***Gayatri Devi Vs. State & Ors. 2011 (126) DRJ 15*** whereby this Court rejected the plea of the petitioner therein and not interfered with the impugned order whereby bail was granted after the respondent remained in jail for 45 days.

30. It is not in dispute that there are 46 accused in the present case and 25 accused in abroad in different countries. Out of 25 accused, 60% to 70% are in foreign countries. Letter Rogatories (LRs) have already been issued. Investigation in the present case started in the year 2014. Accused No. 46 Jaspreet Ahuja is in abroad.

31. Thus more than five years are over and the investigation in the present case is still going on. Out of 46 accused, 25 accused are in abroad in

different parts of country. Thus, the investigation may continue for further substantial years. The respondent has already undergone around 100 days in judicial custody and has been interrogated substantially during the remand of petitioner and in judicial custody.

32. It is settled that once bail granted should not be cancelled in a mechanical manner without considering any supervening circumstances which is not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same. However, all those facts are missing in the present case.

33. It is also not in dispute that in the present case out of 46 accused, only 5 accused have been arrested and four accused are on bail. Only accused 35 Christian Michel James is in judicial custody who was extradited from abroad.

34. It is pertinent to mention here that learned Solicitor General during arguments handed over some documents, however, not in the sealed cover and without furnishing the same to the counsel for the respondent. Since these documents are not in sealed cover and not furnished to the counsel for the respondent, therefore, this Court has not perused the same and not relied upon.

35. In view of the facts and circumstances of the present case and the law discussed above, I am of the view that there is no ground made in the present petition to interfere with the impugned order 02.12.2019 whereby learned Special Judge has granted bail to the respondent.

36. The petition is accordingly dismissed.

Crl.M.A.42700/2019

37. In view of the order passed in the present petition, this application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

JANUARY 14, 2020

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