(2019) 08 DEL CK 0024

In the Delhi High Court

Case No : Criminal Revision Petition No. 107 Of 2018

Directorate Of Enforcement — APPELLANT

Vs

Gagan Dhawan & Anr — RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Prevention of Money-Laundering Act, 2002 — Section 3, 4, 45(1)
Indian Penal Code, 1860 — Section 420, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 13, 13(2)

Citation : (2019) 3 JCC 3226 : (2019) 368 ELT 905

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Amit Mahajan, Vinod Diwakar, Arun Bhardwaj, R.K. Handoo, Yoginder Handoo , Aditya Chaudhary, Hemant Shah, Anil Soni, Madhav Khurana, Vighnaraj Pasayat

Final Decision : Dismissed

Judgement

Sunil Gaur, J

In the above captioned first petition, petitioner-Directorate of Enforcement seeks quashing of order of 4th January, 2018 vide which respondent-Gagan Dhawan has been granted regular bail in ECIR/HQ/17/2017, under Sections 3/4 of The Prevention of Money Laundering Act, 2002 (in short "PMLA"), whereas in the above captioned second petition, challenge is to order of 23rd October, 2018, vide which respondent-Ranjit Malik @ Johny has been granted bail in the aforesaid ECIR/HQ/17/2017.

Since these petitions pertain to ECIR/HQ/17/2017 and the challenge to the aforesaid impugned orders is on similar grounds, therefore, both these petitions have been heard together and are being disposed of by this common order.

The facts as noticed in the impugned order of 4th January, 2018 are as under:-

"Briefly stated facts of the present case are that an FIR was registered by the Central Bureau of Investigation (CBI) on 30.08.2017, u/s 13 of Prevention of Corruption Act, 1988 against one Sunil Kumar Ojha-IRS, Dr. Subhash Chandra-IRS and other Income Tax Officers as well as M/s Sterling Biotech Ltd. (SBL) and some other unknown persons on the basis of having found certain hand-written diaries/record of certain transactions of SBL group for the period from 01.01.2011 to 28.06.2011, which was found and seized by Income Tax Department in their search in the office premises of SBL Group, Vadodara, Gujrat. The said diary contained details of bank transactions as well as cash transactions involving name of some individuals including Income Tax Officers. Thereafter, an ECIR was registered by the Enforcement Directorate (ED) and the present applicant Gagan Dhawan was called by the ED on 13 different occasions, who joined the investigation and his statement was recorded. It was alleged that present applicant was known to the Directors of SBL Group, namely Chetan and Nitin. Thereafter, on 25.10.2017, another FIR was registered by CBI for offences u/s 13(2) of Prevention of Corruption Act r/w Sections 420/467/468/471 IPC and same being scheduled offences, a fresh ECIR was registered by ED on 27.10.2017 and the present applicant Gagan Dhawan was summoned and arrested on 30.10.2017 and thereafter, he was remanded to ED custody for about 15 days and is in judicial custody thereafter. The second FIR was registered on the allegations of loan obtained by SBL Group, to the tune of Rs. 5,000/- crores from various banks and it was alleged that the said loan was obtained on the basis of fictitious and forged statement of accounts and the money obtained through loan was invested in shell companies in India as well as abroad. It was further found during investigation that the Directors Nitin Jayantiilal Sandesara and Chetan Jayantilal Sandesara, purchased several properties in New Delhi and Gurgaon, Haryana and present applicant helped the said Directors of SBL Group in diverting and mis-utilizing the credit facilities availed through various banks."

The role of respondent- Ranjit Malik @ Johny, as re-capitulated in the impugned order of 23rd October, 2018, is as under:-

"As to the role of the accused / applicant, it is the complainant"s case that on 24.08.2017 a search was conducted at his premises resulting in seizure of incriminating documents wherein there were multiple entries pertaining to huge amounts/ financial transactions. Another search was conducted at the premises of co-accused Gagan Dhawan inter alia resulting in seizure of some digital devices which upon analysis revealed various whatsapp conversations between Gagan Dhawan and accused/ applicant Ranjit Malik @ Johny regarding several cash transactions. One Rakesh Chandra who was examined by the complainant had told in his statement that accused Ranjit Malik used to work for Gagan Dhawan for collection /delivery of cash from / to various persons / places. As the accused/ applicant did not report to the summons issued to him on various dates and gave evasive replies, that he was arrested on 02.08.2018. It is further the case that even during his custody, accused/ applicant kept on giving evasive replies and failed to account for the cash deposits of Rs. 57,30,500/- made in his and his wife"s account at various intervals."

It is noted in the impugned order of 4th January, 2018 that the investigation of this case is complete and complaint/ charge-sheet has been filed and that respondent- Gagan Dhawan has clean antecedents. Operative portion of the impugned order of 4th January, 2018 reads as under:-

"It is seen that present case is based on documentary evidence and all the bank transactions are recorded which cannot be erased or tampered with by influence of the applicant. It is also relevant to mention that the role of applicant/accused is limited to Rs.1.5 crores property out of Rs.5,000/- crores and admittedly, ED has already attached the plot of applicant worth Rs.1.17 crores, situated in Gurgaon, Haryana. It is seen that applicant is in custody for last 62 days as he remained in ED remand custody for a period of 15 days and since thereafter he is in judicial custody. Investigation of the case is complete and complaint/ charge-sheet vis-à-vis present applicant has already been filed. Applicant is having clean criminal antecedents and is not involved in any other criminal case".

In the impugned order of 23rd October, 2018, it is noted that supplementary complaint has been filed and the co-accused are on bail. The challenge to impugned orders of 4th January, 2018 and 23rd October, 2018 by learned Central Government Standing Counsel (CGSC) for petitioner- Directorate of Enforcement is on the ground that impugned orders disclose utter non-application of mind. It was submitted that gravity of offence has not been considered in the impugned orders. It was further submitted that the parameters for grant of bail have been ignored and that the offence committed by respondents constitute a class apart and a different approach in matters of bail has to be adopted in cases involving economic offences. To submit so, learned CGSC relied upon Supreme Court's decision in Chaman Lal Vs. State of U.P. & Anr. (2004) 7 SCC 525; Sunil Grover Vs. State 2012 SCC OnLine Del 3539; Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation (2013) 7 SCC 439; Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money Laundering Act), Govt. of India through Manoj Kumar (2015) 16 SCC 1; Neeru Yadav Vs. State of U.P. (2014) 16 SCC 508 and Sunil Dahiya vs. State (Govt. of NCT of Delhi) 2016 SCC OnLine Del 5566, to seek quashing of impugned orders.

On the contrary, learned counsel appearing for respondents vehemently controverted the aforesaid stand taken on behalf of petitioner and submitted that the gravity of offence cannot be the sole consideration for grant or refusal of bail. Reliance was placed upon Supreme Court's decision in Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40 to submit that in economic offences of huge magnitude, economy of the country may be jeopardized but at the same time, the Court cannot lose sight of the fact that co-accused Hemant Hathi has been released on bail and the case of respondents herein is on better footing than the case of co-accused Hemant Hathi. Attention of this Court was drawn to Supreme Court's decision in State of U.P. through CBI Vs. Amarmani

Tripathi (2005) 8 SCC 21 to submit that vague allegation of accused tampering with the evidence or witnesses, cannot be a ground to refuse the bail. It was submitted that in Union of India Vs. Hassan Ali Khan & Anr. (2011) 10 SCC 235, bail was refused in a case of money laundering while relying upon Section 45 (1) of PMLA and now, Supreme Court in Nikesh Shah Vs. Union of India & Anr. (2018) 11 SCC 1 has declared Section 45(1) of PMLA as unconstitutional, being violative of Articles 14 & 21 of the Constitution of India.

Reliance was also placed upon decision of a Coordinate Bench of this Court in Upendra Rai Vs. Directorate of Enforcement 2019 SCC OnLine Del 9086 to submit that bail has been granted to accused against whom far more serious allegations were levelled. It was submitted that respondents-accused persons have already joined the investigation and now the case is at the stage of charge. Thus, it was submitted that there is no illegality or infirmity in the impugned orders and so, these petitions deserve dismissal.

The submissions advanced by both the sides have been duly considered and the impugned orders have been tested in the light of the final report filed in this ECIR case and the decisions cited have been carefully perused and thereupon it transpires that the impugned orders have not dealt with the aspect of gravity of the offence in question in detail. It is apparent that the impugned orders do not take note of the embargo to grant of bail, put by Section 45(1) of the PMLA. However, this infirmity in the impugned order itself does not go to the root of the matter for the reason that Supreme Court in Tarachand Shah (Supra) has already declared Section 45(1) of the PMLA to be unconstitutional. The impugned orders have been tested on the parameters for grant of bail, as reiterated by the Supreme Court in Amarmani Tripathi (Supra) and this Court finds that in the face of a recent decision of Supreme Court in Tarachand Shah (Supra), no reliance can be placed upon Supreme Court's earlier decision in Hassan Ali Khan (Supra), wherein while invoking Section 45(1) of the PMLA, bail granted was cancelled.

A Coordinate Bench of this Court in Upendra Rai (Supra) has taken note of the fact that Section 45(1) of the PMLA has been declared as unconstitutional and thereafter, has granted bail in a case under the PMLA involving Rs. 16 crores odd. Pertinently, in the case of respondent-Gagan Dhawan, the extent of money laundering alleged is of Rs. 1.5 crores. It is relevant to note that during investigation of this case, attachment of respondent-accused's property to the extent of Rs. 1.17 crores has already taken place and a supplementary complaint has already been filed and the case is at the charge stage.

In the case of respondent- Ranjit Malik @ Johny, the extent of money laundering has not been highlighted in the final report. The role attributed to respondent-Ranjit Malik @ Johny is of being in hand and glove with respondent- Gagan Dhawan.

During the course of hearing, it was not disputed by learned CGSC for petitioner that co-accused of respondents-accused persons are already on bail. It has not been shown to this court that the case of respondents-accused persons herein is on higher footing than the case of co-accused, who have been already granted bail. Although during the course of hearing, it was asserted on behalf of respondents-accused persons that the case of respondents-accused persons is on better footing than that of co-accused but this aspect is not required to be commented upon, as this Court finds that the gravity of offence alleged against respondents-accused persons is not of such magnitude to justify denial of bail to them. There is no basis for this Court to conclude that the court below has erroneously exercised its discretion in granting bail to respondents-accused persons or that the exercise of discretion in granting bail to respondents-accused persons is arbitrary.

It is settled position of law that that the parameters for cancellation of bail and the grounds for challenging the order of grant of bail on the ground of arbitrary exercise of discretion, are altogether different. In matters of grant of bail, the merits of the case are not required to be gone into in detail. The court below in the impugned orders has taken note of the gist of the offence alleged against respondent-accused persons and has thereafter, taken into consideration the fact that the final report had been filed.

In the light of above, this Court is of the considered view that respondent-accused persons deserve bail on merits and so, impugned orders granting bail to respondents-accused persons are not liable to be interfered with, as the impugned orders do not suffer from any infirmity or illegality.

Consequently, these petitions are hereby dismissed, while making it clear that any observation made herein, shall have no bearing on merits at trial.