

(2023) 10 CHH CK 0002

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Case No. 4911, 5056, 5143, 5718 Of 2023

Nitesh Purohit

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Constitution of India, 1950 — Article 20(3), 21
Indian Penal Code, 1860 — Section 120B, 191, 199, 200, 204
Code Of Criminal Procedure, 1973 — Section 439
Prevention of Money Laundering Act, 2002 — Section 2(1)(na), 2(1)(u), 3, 4, 8, 23, 24, 45, 50
Income Tax Act, 1961 — Section 277, 278E

Citation : (2023) 10 CHH CK 0002

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Puneet Bali, Prafull N. Bharat, Mateen Siddiqui, Aditya Soni, Mizba Dhibar, Abhyuday Tripathi, Surendra Singh, Fouzia Mirza, A.C. Singh, Harshwardhan Parganiha, Saloni Verma, Harshit Sharma, Manish Mishra, Prashant Pandey

Final Decision : Dismissed

Judgement

1. Since all the bail applications are arising out of Crime (ECIR) bearing No.ECIR/RPZO/11/2022 they are being heard and decided together by this common order
2. The applicants have preferred these bail applications under Section 439 of the Cr.P.C. for grant of bail as they have been arrested in connection with the complaint filed by the Directorate of Enforcement, Government of India under Section 44 read with Section 45 of the Prevention of Money Laundering Act, 2002 (for brevity 'the PMLA') for the offence under Section 3 and 4 of the PMLA in ECIR/RPZO/11/2022 wherein the present applicants have been named as an accused.

MCRC No.5718 of 2023 (Arunpati Tripathi) :

3. (i) The allegation made against Arunpati Tripathi is that he along with Tuteja & Ms Saumya Chaurasia, in collusion with each other took bribes, illegal commissions and unaccounted monies etc. in the State of Chhattisgarh and the bribe collection work was done by Anwar Dhebar and his associates on their behalf.

(ii) As per the complaint the further allegation is that the sale of liquor in Chhattisgarh was one of the major sources of illegal earning of the syndicate wherein Anil Tuteja along with Anwar Dhebar, Arunpati Tripathi, MD, CSMCL (Chhattisgarh State Marketing Corporation Limited) and Vikas Agarwal, Arvind Singh, Sanjay Diwan, acted on their behalf.

(iii) It was stated that the Enforcement Directorate (for brevity 'the ED') has analysed the predicate complaint and the data shared by the Income Tax Department. On the basis of the documents, it was established that a well planned systematic conspiracy was executed by the syndicate to earn illegal commission in the sale and licensing of liquor in the State of Chhattisgarh. The CSMCL was created with the responsibility to retail liquor in the State of Chhattisgarh through its stores. However, the CSMCL has become the tool in the hands of the syndicate and started a parallel Excise Department.

(iv) According to the ED, the syndicate comprises of senior bureaucrats, politicians and officials of the Excise Department and the present applicant was assigned with the task to maximize the bribe commission collected on liquor procured by CSMCL and to make necessary arrangement for sale of non duty paid liquor in the CSMCL run shops. The task of cash collection was given to one Vikas Agrawal. The syndicate introduced a 4th type of mechanism to extort bribe and introduced the concept of FA-10A licenses and the same were given to the persons who were associated with Anwar Dhebar and the foreign liquor was sold to Chhattisgarh Government warehouses and commission of 10% was generated. Arunpati Tripathi being the inside man of Excise Department changed the policy.

(v) The statement of Arunpati Tripathi was recorded under Section 50 of the PMLA wherein revelation was made which led to investigation. Statement of Vidhu Gupta was also recorded wherein he stated that he gave bribe of ₹ 90.00 lacs for supply of hologram and admitted that he was supplied duplicate hologram in the State of Chhattisgarh.

MCRC No.4911 of 2023 (Nitesh Purohit) :

4. The statement of Nitesh Purohit was also recorded under Section 50 of the PMLA and according to the statement he had given ₹ 25.00 crores to one Laxminarayan Bansal in cash as per the direction of Anwar Dhebar. According to the ED statement of Arvind Singh money was being distributed in three categories e.g. Commission (Part A), Unaccounted Liquor (Part B) and percentage (Part C) whereby 9 shareholders got the benefit of it. Nitesh Purohit further stated he had a close proximity and friendship with Anwar Dhebar and were working in consortium.

MCRC No.5056 of 2023 (Trilok Singh Dhillon) :

5. As against Trilok Singh Dhillon, it is alleged that the ED investigation has revealed that from the financial year 2019-20 to 2022-23 illegal earning to the tune of ₹ 2000 crores was generated by the syndicate in different way of commission in Part A, B & C and commission from FL-10A licence holders. According to the ED, this applicant knowingly participated in the criminal acts of the syndicate and is in possession of proceeds of crime. The applicant herein was roped in by the syndicate for safe keeping and concealment of the illegal commission. He received the part A commission from the liquor suppliers in his bank account. Trilok Singh is the Director in Petrosun Buo Refineries Pvt. Ltd. and raised the bills against supply of grains, whereas grains were supplied by their regular supplier only. Similar arrangement was made with AJS Agro Trade Private Limited, which is a company controlled by Anwar Dhebar, therefore, the present applicant is in possession of proceeds of crime through him company Petrosun Bio Refineries Pvt. Ltd., which was utilised by the syndicate to solve the problem of the distillers or arranging cash for payment of part A commission. The statement of Kamlesh Kumar Kesharwani, owner of Keshri Rice Mill was also recorded. The proceeds of money are used for accumulation of huge wealth.

MCRC No.5143 of 2023 (Anwar Dhebar) :

6. (i) On the basis of letter dated 11-7-2023 by the DIG, EOW & ACB, Chhattisgarh that how the liquor syndicate is collecting illegal commission out of the sale of liquor, the issue came to fore. However, despite the letter no action was taken by the police. The allegation that Anwar Dhebar acted for his political benefactors and in association with the topmost bureaucrat Anil Tuteja and they both conceived and planned the entire scam using the position of Anil Tuteja, who is an IAS officer. Anwar Dhebar got posted the officials of his choice in the Excise Department and he ran the entire bribe collection racket for part A, B & C and from FL-10A licence holders. He ran an unprecedented scam of selling unaccounted illicit liquor from the State run shops. Through his political affiliation and with the active support of Anil Tuteja, IAS, Arunpati Tripathi, ITS and Niranjana Das, IAS, the applicant Anwar Dhebar controlled all the limbs of liquor trade to run the manufacture & sell the illicit country made liquor.

(ii) It was stated that by such act, he sold 19.2 crores bottles of illicit liquor with active connivance of distillers, hologram maker, bottle supplier, transporter, shop keeper, cash collection agency, District Excise officials, etc. This racket was stopped only after raids conducted by the IT Department in June 2022 and subsequent action by the ED. Therefore, the accused has caused whopping loss to the State exchequer.

(iii) Anwar Dhebar ensured that the commission was paid timely by the liquor suppliers and in case of non payment, the payment of liquor suppliers from CSMCL was got delayed by the co-accused Arunpati Tripathi. Therefore, he was responsible for collection of every single penny of the proceeds of crime.

(iv) It was further alleged that Anwar Dhebar apart from collecting commission on sale of accounted liquor (part A) and sale of unaccounted kacha illegal liquor (part B) was also collected bribes from the main distillers so that they can form a cartel and divide the entire market share among themselves. This was known as Part C earning.

(v) It was also stated that investigation conducted also revealed the role of AJC Agro Trade Pvt. Ltd., which is associated with Anwar Dhebar and was used by him to earn commission in banking channel and he asked the distillers to purchase grains through AJS Agro Trade Pvt. Ltd. Co-accused Arunpati Tripathi has disclosed the role played by Anwar Dhebar and the statements of Naveen Kedia, Bhupendra Pal Singh Bhatia and Rajendra Jayaswal have disclosed that they were called by Anwar Dhebar in a meeting and asked to give commission of ₹ 75/- per case in sale of country liquor. It was further stated that huge properties were purchased by Anwar Dhebar by the proceeds of crime and invested in different real estate business.

7. (i) Mr. Puneet Bali and Mr. Prafull N. Bharat, learned senior counsel appearing with Mr. Mateen Siddiqui, Advocate, Mr. Aditya Soni, Ms. Mizba Dhibar and Mr. Abhyuday Tripathi, Advocates, learned counsel for the applicants in MCRC No.4911 of 2023 (Nitesh Purohit) & MCRC No.5143 of 2023 (Anwar Dhebar), would submit that on a complaint filed by the Income Tax Office at Tis Hazari Court, New Delhi, cognizance under Section 277 of the Income Tax Act and Section 191 of the IPC was taken and the present accused persons have been inculpated by aid of Section 120B IPC. They would submit that since the offence under Section 120B IPC cannot stand alone, which is a scheduled offence, the ECIR cannot stand. They would also submit that the order dated 28-4-2023 passed by the Hon'ble Supreme Court in the matter of Yash Tuteja & Anr. v Union of India & Ors. {WP(s)(criminal) No(s).153/2023} would show that against the cognizance order, the other two accused filed a revision wherein such cognizance was stayed even under Section 277 of the Income Tax Act and under Section 191 of the IPC.

(ii) Learned senior counsel would further submit that when the cognizance was not taken by the Court on a complaint of the Income Tax Department another FIR was filed at Noida (Uttar Pradesh) bearing FIR No.196/2023 dated 30-7-2023, which was with respect to hologram case. They would submit that since Section 277 of the IT Act and Section 191 of the IPC are not scheduled offences no cognizance can be taken and against revision of the same taking cognizance under Sections 277 of the IT Act and Section 191 of the IPC that has been stayed by the Sessions Court. Learned counsel would submit that the complaint filed by the Department under Sections 277 and 278E of the IT Act and Sections 191, 199, 200, 204 read with Section 120-B of the IPC, except the offence under Section 120-B nothing is a scheduled offence and, as such, Section 120-B IPC cannot stand alone.

(iii) Learned counsel would also submit that the co-accused are on bail. They

would refer to the interim order dated 18-7-2023 passed by the Supreme Court in favour of one of the co-accused wherein it was observed that the complaints having been returned, the Income Tax authorities having taken that to a further Court in appeal and there being any absence of stay, the authorities were directed to stay their hands in all manner.

(iv) Further reference is made to the order dated 7-8-2023 passed by the Supreme Court with respect to the FIR lodged at Noida wherein the Uttar Pradesh police were also directed not to take any coercive steps till the next date.

(v) Learned counsel would next submit that initially the complaint having been made from which the ECIR was filed, as on date no offence can be said to have pending. They would lastly submit that the charge sheet though has been filed but cognizance has not been taken and as such the applicants may be released on bail.

8. (i) Mr. Surendra Singh and Ms. Fouzia Mirza, learned Senior counsel appearing with Mr. A.C. Singh, Mr. Harshwardhan Parganiha, Ms. Saloni Verma, Mr. Harshit Sharma, Mr. Manish Mishra & Mr. Prashant Pandey, learned counsel for the applicant in MCRC No.5056 of 2023 (Trilok Singh Dhillon), while adopting the arguments advanced on behalf of the applicants namely; Nitesh Purohit & Anwar Dhebar would submit that neither at Tis Hazari Court nor in the FIR at Noida, name of this applicant has not been taken.

(ii) Learned counsel would further submit that according to the ED, the income was assessed for the year 2020-21. The applicant has filed his income tax return, which was accepted by the Income Tax Department and no appeal was filed. Therefore, that assessed income has attained finality and no unaccounted cash was found in the hands. Thus, prima facie, the case of the ED is false. Therefore, at a subsequent stage how it can be stated that the amount which was alleged to be in hands of the applicant can be said to be proceeds of crime.

(iii) Learned counsel would also submit that the applicant is in custody since 11-5-2023. According to them no further investigation is required as the same has been stayed and hence the applicant may be released on bail.

9. Mr. Rajeev Shrivastava, learned Senior counsel appearing with Ms. Isha Jajodia, Ms. Anu Mishra, Mr. Saurabh Sahu & Ms. Kajal Chandra, learned counsel for the applicant in MCRC No.5718 of 2023 (Arunpati Tripathi), would adopt the aforesaid arguments.

10. (i) Dr. Saurabh Kumar Pande, learned counsel for the Enforcement Directorate, per contra, would oppose the bail applications. He would further submit that one of the co-accused has been enlarged on interim bail and the case pertains to liquor scam wherein hefty loss has been caused to the State exchequer and the proceeds of crime has gone to the hands of the accused. Learned counsel would submit that in an organised manner the commission was fixed and it was enhanced. Arunpati Tripathi gave order for hologram which was

found to be fake and collected bribe for duplicate hologram. The money has gone to the hands of accused in connivance with each other.

(ii) Learned counsel would submit that in a case filed by the Income Tax Department at Tis Hazari Court, Delhi, the cognizance was taken qua the Income Tax Department and the summons were issued under Section 277 of the IT Act and Section 191 of the IPC. This was stayed by the Sessions Court and for the rest of the offence it was only returned on the ground of territorial jurisdiction. When challenged the order of not taking cognizance before the Delhi High Court it observed that since it has been stayed by the Sessions Court no order is required, therefore, he would submit that the enquiry is still pending.

(iii) According to the learned counsel, in the order of the Supreme Court the investigation has not been stayed, which would take into sweep the other accused, as such the benefit of bail cannot be extended to the present applicant and the bail applications may be dismissed.

11. I have heard learned counsel appearing for the parties and perused the documents.

12. As per the ED, the syndicate collected the illegal money in the following four mechanisms :

(I) Part 'A' : Illegal commission charges from the liquor suppliers on the accounted sale of liquor in Chhattisgarh.

(II) Part 'B' : Sale of off-the-record unaccounted country liquor (popular in Chhattisgarh) from State run shops. This was done with the active involvement of distillers, hologram, manufacturer, bottle maker, transporter, man power management, District Excise Officials.

(III) Part 'C' : Annual commission paid to allow distillers to operate in the State.

(IV) FL-10A License : introduction of private wholesaler to earn illegal profit.

13. I have gone through the statements recorded in various cases of Arunpati Tripathi and Vidhu Gupta wherein role of Arunpati Tripathi has been stated and specially in the statement of Vidhu Gupta the role of Arunpathi Tripathi has been elaborated. Likewise in the case of Nitesh Purohit, apart from the statement of Nitesh Purohit under Section 50 of the PMLA, Arvind Singh had stated the modus operandi which shows that for commission of Part A, B & C, the money of the commission was distributed by nine shareholders, which shows that all the persons are influential one, few of them are part of system.

14. In case of Trilok Singh Dhillon statement of Sanjhiv Fatehpuria & Kamlesh Kumar Kesharwani was seen wherein the specific role played by Trilok Singh Dhillon has been explained.

15. In respect of Anwar Dhebar all the witnesses have named him in their respective statements and attributed the role played.

16. Section 45 of the PMLA envisages that when the Public Prosecutor opposes the application and the Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of such offence; and that he is not likely to commit any offence while on bail, the bail can be granted. This proposition was lamented by the Supreme Court in the matter of Vijay Madanlal Choudhary & Ors. v Union of India & Ors. {SLP (Cri.) No.4634 of 2014}. So after going through the statements of witnesses, filed with reply, the ways and means have been disclosed which inculcate the applicant, at this stage, the first part of condition of Section 45 that applicants are not guilty of offence of money laundering cannot be presumed.

17. In the case of Vijay Madanlal Choudhary (supra), in the conclusion, the Supreme Court held thus :

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(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.

(iii) The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

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(v) (a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of

property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/ acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

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(xv) (a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

18. The Supreme Court in the matter of Vijay Madanlal Choudhary (supra) held thus at para 33 :

33. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

19. Perusal of the aforesaid decision would show that the authorities under the PMLA cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and

that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum.

20. In the case in hand, the complaint has already been registered in pursuance of registration of scheduled offence, proceeds of crime has also been recovered and after enquiry the complaint has been filed and it is pending before the competent Court. Apart from it is not a case of defence that scheduled offence has not been registered with the jurisdictional police. Applicants have not been finally absolved of their offences by a Court of competent jurisdiction by an order of discharge, acquittal or quashing of a criminal case of a scheduled offence, therefore, the attempt to take a guard pursuant to para 33 of the judgment cited above would be a misinterpretation.

21. Further, the initial filing of the complaint by the Income Tax Department, which includes the predicated offence though cognizance taken in respect of two sections, but the complaint was not dismissed at the threshold. The Income Tax Department was given free hold to file it before the competent jurisdictional Court apart from the fact that the FIR has been registered with respect to hologram at Noida (Uttar Pradesh), which is pending enquiry before the police which includes names of Arunpati Tripathi, Anwar Dhibar and others.

22. There is a legal presumption envisaged under Section 23 of the PMLA, which speaks that where money laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money laundering, then for the purposes of adjudication or confiscation under Section 8 or for the trial of the money laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions. However, there is a reverse burden of proof under Section 24 of the PMLA that in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering.

23. From perusal of the aforesaid conclusion laid down by the Supreme Court in the matter of Vijay Madanlal Choudhary (supra), it is evident that action taken under the PMLA falls under the definition of 'enquiry'. The enquiry is like a judicial proceeding (Section 50 of the PMLA) and further since the authorities are not police officers, the statement of person including accused recorded during the enquiry can be seen at the stage of grant of bail and presumption can also be made by the Court if the statement so recorded contains facts constituting the offence of money laundering as envisaged under Section 3 of the PMLA. Since it is undisputed fact that the complaint has already been filed, at this stage, on the basis of statements and material available on record, it is sufficient to draw, prima facie, presumption about the involvement of the applicants in money laundering and possession of the proceeds of crime.

24. For the reasons discussed hereinabove and applying the well settled principles of law, I am of the opinion that present is not a fit case to grant bail to the applicants.

25. In the result, all the bail applications are liable to be and are hereby rejected. Consequently, the interim order passed earlier stands discharged.