

(2025) 07 DEL CK 0949

In the Delhi High Court

Case No : Bail Application No. 2173 Of 2021, Criminal Miscellaneous
Petition(BAIL) No. 861 Of 2021

Prabir Purkayastha

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision : 23-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 406, 420
Prevention of Money Laundering Act, 2002 — Section 3, 4, 19, 50
Customs Act, 1962 — Section 108

Citation : (2025) 07 DEL CK 0949

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Kapil Sibal, Dayan Krishnan, Arshdeep Singh Khurana, Harsh Srivastava, Sidak Singh Anand, Shreedhar Kale, Nikhil Pawar, Peeyush Bhatia, S.V. Raju, Zoheb Hossain, Vivek Gurnani, Kanishk Maurya, Harik Sabharwal, Pranjali Tripathi, Kunal Kochar, Siddharth Kumar, Mohit Godara

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J.

1. Bail Application under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') has been filed on behalf of the Applicant, Prabir Purkayastha seeking Anticipatory Bail in ECIR bearing ECIR/14/HIU/2020 dated 02.09.2020 under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'ECIR').

2. The Applicant submits that he is a respectable and law-abiding citizen of India having deep roots in the Society and is residing with his Partner. He is a reputed journalist and is also a Director of M/s PPK Newsclick Studio Pvt. Ltd., a law-abiding corporate entity incorporated under the Companies Act, 2013, which owns and operates "newsclick.in" set up in 2009, one of the most popular and

reputed digital media platforms in the country as well as abroad.

3. The expertise of the Applicant in various issues relating to industry and technology, has also been recognised by the Government of India. He has been a member of the National Steering Committee, ASTeC Programme as well as a Member of the Expert Group on Industrial Application, both of which are convened under the aegis of the Ministry of Electronics and Information Technology, Government of India. He has published several scholarly Articles in various National and International Publications in the field of Engineering, Software Technology, Energy Policy and other social issues.

4. The Newsclick was controlled by a Trust, namely, the Newsclick India Trust and later from the year 2015, a Limited Liability Partnership i.e. M/s PP Newsclick Studio LLP. With an intent to receive investment to allow the LLP to grow and expand, an Agreement dated 01.05.2017 was entered between M/s PP Newsclick Studio LLP and M/s BGJC Associates LLP. Further, to enable a smooth inflow of future investment, a decision was taken by M/s PP Newsclick Studio LLP, to convert the LLP into a private Limited Company, which was done on 03.06.2017.

5. The Company was approached for FDI and ultimately, an entity by the name of M/s Worldwide Media Holdings LLC (hereinafter referred to as 'WWMH') invested the shares of the said Company as FDI.

6. WWMH was incorporated on 29.11.2017 as a Limited Liability Corporation in USA. During this time, when the possibility of investment by WWMH in the Company was being discussed, the Applicant wanted to confirm the regulatory regime around the receipt of FDI by a Company engaged in the Digital Media business, to ensure any regulatory regime is fully complied with.

7. The Applicant addressed a Letter dated 20.12.2017, to the Ministry of Information and Broadcasting requesting for a clarification to the FDI Policy. The Ministry of Information and Broadcasting gave a Reply dated 05.01.2018 clarified that "online publications on website/web portal do not fall under the ambit of print media."

8. Thus, in accordance with the terms of the Agreement dated 01.05.2017, M/s BGJC and Associates LLP submitted a valuation Report dated 28.02.2018 wherein the shares of the Company were valued at Rs.9188 per share. The Independent valuers also issued a Certificate dated 05.02.2018 certifying that the fair value of the equity shares of the Company may be taken as Rs.9188 per share having face value of Rs.10 each. This valuation was a legal requirement for the investment by foreign entity into shares of an Indian entity, in terms of Regulation 11(1), Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

9. Consequent to the Valuation Report, the parties agreed to a value of Rs.11,510 per share. The parties entered into an Investment Agreement dated 20.03.2018 wherein WWMH agreed to invest a total of USD 4.5 Million in three

tranches of USD 1.5 Million each, in exchange for a total 23.07% shares of the said Company. The Investment Agreement dated 20.03.2018 was executed between WWMH and M/s PPK Newsclick Studio Pvt. Ltd.

10. In terms of the Agreement dated 20.03.2018, the first tranche of investment of USD 1.5 Million, was remitted by WWMH on 11.04.2018, in exchange for 7.69% shares of the Company. However, the remaining investment was never remitted or exercised by WWMH. Consequently, WWMH holds 7.69% shares of the Company.

11. The investment of FDI by WWMH was lawful investment, in terms of the law regarding FDI in Digital News Media in 2018 and no offence is disclosed. Furthermore, FIR has been registered mala fide to cull the free speech, harass and intimidate the Applicant.

12. It is submitted that the copy of the ECIR, has not been made available to the Applicant. He had been requesting for the copy since April, 2021, during which period the investigations have continued and the Applicant has been examined on various dates. There is no allegation against the Applicant that he has not co-operated during the investigations.

13. Furthermore, it is apparent from the questioning of the Respondent/ED during the appearance of the Applicant on 14.06.2021 and 17.06.2021, that they have no bearing to the allegations made against the Applicant and M/s PPK Newsclick as alleged in the FIR No. 116/2020 dated 26.08.2020, registered at Police Station EOW. The Applicant apprehends that there is fishing and roving enquiry, aimed at taking coercive steps against the Applicant on any ground. In the absence of ECIR, the Applicant is unaware of the exact allegations against him. Writ Petition bearing W.P.(Crl.) No. 1129/2021 has been filed for seeking the copy of the ECIR. The Applicant was being made to face any investigation without even knowing the specific allegations against him.

14. The Respondent on 23.06.2021, on an Application filed by the Applicant for being supplied with the copy of ECIR, decided to give the same to the Applicant. It is claimed that this concession had been given by the ED only after interim Orders of protection were passed in favour of the Applicant. However, despite stating so, the copy of the ECIR has still not been supplied to the Applicant, which clearly reflects the mala fide on the part of ED. It also indicates that ED intends to take coercive action against the Applicant.

15. The Anticipatory Bail is sought on the ground that there is no Scheduled Offence against the Applicant in the present Case and therefore, there cannot be any offence of money laundering under Section 3 PMLA, which is a sine qua non for the offence of money laundering.

16. In the end, it is submitted that the Applicant satisfies the triple test of Flight Risk, influencing witnesses and tampering evidence.

17. The Applicant is a Senior Journalist with deep roots in the society. He has co-

operated with ED and there is no likelihood of him being a flight risk.

18. There is no allegation that he has ever influenced or intimidated the witnesses. Moreover, the entire evidence is documentary in nature, which has already been seized by ED and there are no chances of him fleeing from justice.

19. It is submitted that the Applicant is a Senior Citizen aged about 71 years and suffers from various co-morbidities and any custody of the Applicant could be deleterious upon his health, especially in the light of the COVID-19 pandemic.

20. It is, therefore, submitted that he be granted Anticipatory Bail.

21. The Respondent in its Reply, has alleged that M/s PPK Newsclick Studio Pvt. Ltd. received a FDI of Rs.9.59 Crores from WWMH during the Financial Year 2018-2019, which was used for allotment of 8333 Equity shares of Rs.10 each at a premium of Rs.11,510/- per share as against the allotment of share of Rs.10/- at face value only to the promoters, apparently, much higher than valued by RBI. The reason for charging huge premium on allotment of Share seems to deliberately avoid the restrictions/cap of FDI in the Digital News website at 26% of the capital, as well as to avoid Government approval for such FDI.

22. The Investor Company WWMH was incorporated in USA giving the address of the Chartered Accountant and the Company was reported as cancelled due to non-payment of Tax as on 01.06.2017. It shows that this Company had received FDI of Rs.9.59 Crores from WWMH, after a gap of more than one year from the date when this Company was cancelled. The reason for incurring such huge losses was excessive payment for consultancy, salary and rent. For example, salary/consultancy fee of Rs.3.82 Crores and Rs.1.12 respectively was paid during the Financial Year 2018-2019 even when the total revenue of the Company was Rs.1.10 Crore.

23. More than 45% of FDI was actually diverted / siphoned-off for the payment of salary/consultation, fees, rent and other such expenses of promoters/journalists/employees associated with the Company. Prima facie these facts suggested that the FDI was actually intended to make the payments for ulterior motives, clandestinely. The above News Portal has violated the FDI law and other laws of the country and caused loss to the exchequer. Hence, the FIR was registered and the investigations initiated.

24. It is further contended that the present Application under Section 438 Cr.P.C is pre-mature as the condition precedent is that there has to be a reason to believe that the Applicant is likely to be arrested. The Applicant had approached this Court on issuance of Summons under Section 50 of PMLA. The investigations being conducted by ED is at nascent stage and to argue that the Applicant is apprehending arrest would be an admission that he is guilty of the offence of money laundering.

25. To make any arrest under Section 19, the Respondent Department necessarily has to comply with the stringent conditions of Section 19 PMLA. The

power of arrest is statutory in nature and is circumscribed by considerations and cannot be exercised at the whim or fancy of an officer.

26. The Apex Court in the case of Ramesh Chandra Mehta vs. State of West Bengal, AIR 1970 SC 940 has observed that a person who is called to give a statement, cannot be said to be an Accused of an offence at this stage and is bound to comply with such directions as mandated under Section 108 of Customs Act. The condition precedent for maintainability of the Bail Application under Section 438 Cr.P.C is not made out and the Bail Application is liable to be dismissed, on this ground itself.

27. Furthermore, sufficient safeguards have been provided under Section 19 PMLA, in regard to the arrest of the Accused. The arrest of a person can be made only after compliance of the stringent conditions of Section 19 PMLA. It also provides adequate protection to individual freedom and liberty by laying down the norms so that the power of arrest is not abused.

28. The Notice has been given under Section 50 PMLA, to the Applicant to join the investigations and for producing documents. The blanket protection given by the Court, to the Accused obstructs, interferes and curtails the authority of the authorised officer to exercise the powers given by the statute.

29. Reliance has been placed on P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24 and Rohit Tandon vs. Directorate of Enforcement, (2018) 11 SCC 46.

30. On merits, all the averments made in the Bail Application, are denied.

31. It is stated that Section 420/406 and 120-B of IPC under which the FIR has been registered, are scheduled offences. Therefore, the investigations undertaken by the ED is valid in law and cannot be scuttled by a bald averment that no scheduled offence is made out.

32. It is further submitted that merely because the evidence is documentary or there is little likelihood of tampering with the documents, can be a ground to grant the Bail.

33. It is, therefore, submitted that no Anticipatory Bail be granted.

34. The Applicant in the Rejoinder has explained that the Respondent has asserted that there is no apprehension of arrest in the instant case, while at the same time stated that the acts of the Applicant are punishable under the IPC, which is covered under paragraph 1 the of Schedule given under PMLA, to submit that the plea taken by the Applicant that there is no Scheduled offence is wrong and misleading.

35. It is further submitted that the Applicant is a renowned journalist. The intention of the Investigating Agency is merely to harass the Applicant, which is evident from the manner in which the investigations are being conducted. The urgency which was shown during the pre-protection period seems to have

disappeared in the post protection period.

36. The Applicant was last summoned by the ED on 17.08.2021 and thereafter, he has not been called even once for joining the investigations.

37. Even though, the investigations are pending since 02.09.2020, no prosecution Complaint has been filed by the ED in the Court.

38. Therefore, prayer is made that the interim protection granted to the Applicant vide Order dated 29.07.2021, may be confirmed.

39. Written Submissions have been filed on behalf of the Respondent, which is essentially in line with the averments made in the Reply. It also details the manner of transaction.

Submissions heard and the record perused.

40. Personal Liberty is a precious Constitutional value and cannot be tampered with casually. The objective behind depriving an individual of his personal liberty must be founded on serious considerations. An accused, as a presumed innocent person, is entitled to present his case and establish his innocence.

41. The Apex Court State vs. Jaspal Singh Gill, AIR 1984 SC 1503 has observed that while granting Bail, in non-bailable offences where the trial has not yet commenced, the Court should take into consideration various matters such as nature and seriousness of offence, character of evidence, reasonable possibility of the presence of accused not being required at trial, apprehension of tempering with witnesses, and other similar considerations.

42. In the instant case, the allegations against the Applicant are of misuse and siphoning- off the funds received from the Foreign Companies and violation of the Rules of RBI. As has been rightly pointed out, the cases got registered in 2020 but even in the predicate offence, the investigations have not been concluded nor any Charge-Sheet filed.

43. There is also nothing on record to suggest that the Applicant has been called since 2023 ever to join the investigations. The Applicant is a respectable man, aged about 75 years, having roots in the Society. The evidence is essentially documentary in nature and there is no likelihood of tampering with the evidence or of influencing the witnesses.

44. Considering the prolonged investigations, and in view of the aforesaid circumstances, it is directed that in the event of arrest, the Applicant/Accused shall be admitted to Anticipatory Bail by the Investigating Officer/Arresting Officer, subject to be following conditions:-

(i) The Applicant/Accused shall furnish a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/ Arresting Officer.

(ii) The Applicant/Accused shall join the investigations, as and when called by the

Investigating Officer and shall co-operate during the investigations.

(iii) The Applicant/Accused shall furnish his cell-phone number to the Investigating Officer on which he may be contacted at any time and shall ensure that the number is kept active and switched-on at all times.

(iv) The Applicant/Accused shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.

(v) The Applicant/Accused shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

45. The Petition stands disposed of in the above terms. The Pending Application, if any, also stands disposed of.

46. Copy of the Order be sent to the learned Trial Court for compliance.