(2021) 03 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Bail Application No. 28 Of 2021, Criminal Miscellaneous No. 184, 185, 323 Of 2021

Suresh Kumar Rekhi And Another — APPELLANT

Vs

Union Of India And Another — RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 3, 4
Jammu And Kashmir Public Men And Public Servants Declaration Of Assets And Other Provisions Act, 1983 — Section 12, 14, 13, 15
Prevention Of Corruption Act, 1988 — Section 5(1), 5(2), 5(1)(2)
Code Of Criminal Procedure, 1898 — Section 438
Constitution Of India, 1950 — Article 20

Citation : (2021) 03 J&K CK 0021

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ayushman Kotwal, Vishal Bharti

Final Decision : Allowed

Judgement

1 Petitioner No.1-Deputy General Manager in J&K Projects Construction Corporation [JKPSC] along with his wife i.e. petitioner No.2 ,who have been booked by respondent No.2 for offences under Section 3 r/w Section 4 of Prevention of Money-Laundering Act, 2002 [PMLA], have approached this Court for anticipatory bail under Section 438 of Cr.P.C.

2 The Anti Corruption Bureau, Jammu [ACB] registered a case FIR No. 12/2013 dated 05.08.2013 against petitioner No.1 under Section 5(1) read with Section 5(2) of J&K Prevention of Corruption Act, Svt. 2006 (hereinafter referred to as the 'PC Act') on 05.08.2013 on the allegation that petitioner No.1, by indulging in corrupt practices, had accumulated huge wealth disproportionate to his known sources of income. The ACB, upon completion of investigation, and having found the charges against the petitioners substantiated, presented the final report/ chargesheet in the Court of learned Special Judge, Anti Corruption, Jammu

[Special Judge] on 19.03.2008. The ACB, in its chargesheet submitted to the Court of Special Judge, found the petitioners in possession of disproportionate assets to the tune of Rs.3,82,74,730/-. Taking the disproportionate assets accumulated by the petitioners as 'proceeds of crime', respondent No.2 registered ECIR/02/JMSZP/2020 dated 21.02.2020 for offences under Section 3 r/w Section 4 of PMLA and set the investigation in motion. As is claimed by respondent No.2, during the course of PMLA investigation, it is revealed that petitioner No.2 has sold her immovable property i.e a plot situated in Housing Colony, Channi Himmat, Jammu to one Sh. Pritam Sharma for a sale consideration of Rs.63 lac by executing a sale deed on 17.09.2016 and that she has also sold her another immovable property i.e a Flat bearing No.1, Block-C on the ground floor in Nidesh Enclave to one Mrs Tabasum for a sale consideration of Rs.16,95,000/- by executing a sale deed on 27.04.2019. It is submitted that both these properties were part of disproportionate assets and acquired by the proceeds of crime. The petitioners, as is claimed by them in this bail petition, have been cooperating with respondent No.2 and, therefore, they have not been subjected to custodial interrogation. They, however, claim that despite they having extended all the cooperation, respondent No.2 is hell bent upon to take the petitioners in custody and, therefore, apprehending their arrest by respondent No.2, they have filed the instant petition for grant of pre-arrest bail.

3 The respondents have filed their objections. The bail plea of the petitioners has been opposed by them. It is claimed that petitioner No.1 has misused his position and amassed huge wealth by indulging in corrupt practices. The ACB has, in its thorough investigation, found petitioner No.1 and his wife possessing assets disproportionate to their known sources of income. It is also claimed that though, the petitioners are attending the investigation as and when called, yet they are not cooperating and producing the documents as are requisitioned from them. It is also pleaded that the conduct of the petitioners post registration of the aforesaid FIR by the ACB and presentation of chargesheet before the Court of Special Judge has been totally unbecoming of a public servant, in that, they have disposed of two assets which were part of the investigation and had been, prima facie, found by the ACB the assets disproportionate to their known sources of income. It is urged that the petittioners are not entitled to pre-arrest bail in the offences under Section 3 r/w Section 4 of PMLA.

4 Placing strong reliance on the judgments of Supreme Court in the cases of P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24 and Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439, it is argued that in the cases of economic offences which have serious ramifications on the economy of the nation, the Court should be very strict in granting bail, more particularly, the pre-arrest bail. The investigation in economic offences, it is submitted, is a complicated process and various transactions entered into by the accused to cover up the proceeds of crime are required to be traced out and enquired into and, therefore, the custodial interrogation of the accused becomes all the more necessary.

5 Having heard learned counsel for the parties and perused the record, I am of the view that, in the given facts and circumstances of this case, the petitioners deserve the concession of pre-arrest bail.

6 It is not in dispute that prior to registration of a case by respondent No.2 under PMLA, FIR No. 12/2013 dated 05.08.2013 under Section 5(1)(2) of PC Act, Sections 12/14,13/15 of Public Men and Public Servant Declaration of Assets and other Provisions Act, 1988 r/w 168/120-B RPC was registered against by the ACB, Jammu against petitioner No.1. The ACB after completion of investigation presented the chargesheet before the Court of Special Judge. The Special Judge has also framed the charges on 27.09.2018. As per the chargesheet submitted by the police, the petitioners have been found to be in possession of disproportionate assets to the tune of Rs.3,82,74,730/-. This is for the period w.e.f 01.03.1991 to 05.08.2013. Taking the disproportionate assets unearthed by the ACB, respondent No.2 has also initiated proceedings under PMLA and has formally registered ECIR/02/JMSZP/2020 dated 21.02.2020 and is investigating the matter.

7 It is also not in dispute that right from registration of FIR (supra), respondent No.2 has not found it necessary to subject the petitioners to custodial interrogation. It is only recently when from the conduct of the respondents, the petitioners apprehended their arrest, instant application for pre-arrest bail was filed by the petitioners. This Court, vide its interim order dated 04.02.2021, while granting time to Mr. Vishal Sharma, learned ASG to file objections, also provided that the petitioners shall not be harassed, provided they cooperate with the investigation and make themselves available as and when asked by respondent No.2.

8 Though the respondents have made grievance that they have not been able to get desired cooperation from the petitioners, yet it is on record that they have attended the investigation as and when required by respondent No.2. The grievance of respondent No.2, is however, that though the petitioners are complying with the directions and attending the investigation, yet they are not disclosing the information with regard to various documents and the properties. Be that as it may, ECIR in the case was registered on 21.02.2020 and it was with respect to the 'proceeds of crime' unearthed by ACB after thorough investigation. More than one year has passed and the investigation in the offences under PMLA is going on. During this one year, respondent No.2 did not feel the necessity of subjecting the petitioners to custodial interrogation and now when the investigation has considerably proceeded and is nearing completion, it would be travesty of justice, if the petitioners are handed over to respondent No. 2 for custodial interrogation. It needs to be borne in mind that a person accused of an offence cannot be compelled to produce or submit to the investigating agency, the incriminating material for a right against self-incrimination is a fundamental right guaranteed by Article 20 of the constitution of India.

9 Arrest of accused may be required for effective investigation of crime, but the

same cannot be a substitute of post trial punishment. After all, an accused is presumed to be innocent until proven guilty. The golden principle is part of criminal jurisprudence of all civilized nations including India. Stringent conditions of bail under Section 45 of the Act have already been declared ultra vires the Constitution in Nikesh Tarachand Shah vs. Union of India (2018) 11 SCC 1. The position, however, has been remedied by subsequent amendment. Even on merits, what is found by the respondents is possession of disproportionate assets without there being, prima facie, mens rea to pass it off as untainted property.

10 The reliance placed by respondent No.2 on the twin judgments i.e P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24 and Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439 is also misplaced. The aforesaid cases were the cases of economic offences of huge magnitude which had the effect of posing serious threat to the financial health of the country. P. Chidambaram's case (supra) was an investigation in complicated economic offences having huge ramifications and repercussions. The aforesaid cases cannot be compared with the instant case. Instant case is a case of disproportionate assets possessed by the petitioners which, if not explained, would be an offence under the Prevention of Corruption Act and may also fall within the purview of Section 3 read with Section 4 of PMLA.

10 Keeping in view the totality of circumstances obtaining in the instant case and the fact that the petitioners were never arrested by the ACB during investigation in FIR No. 12/2013 dated 05.08.2013, nor they were ever required for custodial interrogation by respondent No.2 while investigating the offences under PMLA for which ECIR/02/JMSZP/2020 dated 21.02.2020 was registered a year back i.e. 21.02.2020, I am of the view that interest of justice would be met by allowing this petition. Accordingly, the instant petition is allowed and the petitioners are granted pre-arrest bail subject to the following conditions:

(i) That they shall furnish personal bonds in the amount of Rs.1.00 lac each with one surety of the like amount to the satisfaction of the Investigating Officer;

(ii) That they shall cooperate with the investigation and shall appear before the investigating officer as and when called for;

(iii) That they shall not leave the territorial limits of Union Territory of J&K without prior permission of the Investigating Officer;

(iv) That they shall not tamper with the prosecution witnesses.

Disposed of accordingly.

