(2020) 06 RAJ CK 0056

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 4148, 5452 Of 2020

Tamanna Begum And Ors — APPELLANT

Vs

Enforcement Directorate And Ors — RESPONDENT

Date of Decision : 01-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 451, 452
Prevention Of Money Laundering Act, 2002 — Section 3, 4
Prevention Of Corruption Act, 1988 — Section 7, 8, 9, 10, 12(1)(a)(c)(d), 13(2), 14
Indian Penal Code, 1860 — Section 120B, 409

Citation : (2020) 06 RAJ CK 0056

Hon'ble Judges : Manoj Kumar Vyas, J

Bench : Single Bench

Advocate : Suresh Pareek, Paveen Sharma, Deepak Chauhan, R.D. Rastogi, Anand Sharma

Final Decision : Dismissed

Judgement

S.B. Criminal Miscellaneous Bail Application No. 4148/2020

1. This Criminal Misc. Bail Application has been brought under Section 438 of Cr.P.C. seeking anticipatory bail in Criminal Case No. 10/2018 pending

before the court of Special Judge, Communal Riot Cases / Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002) Jaipur

Metropolitan, whereby the accused petitioner has been summoned through non bailable warrant for the offences punishable under Section 3 read with

Section 4 of Prevention of Money Laundering Act, 2002.

2. According to brief facts of the case it has been submitted that accused petitioner was not named in FIR No. 251/2015 registered by Anti Corruption

Bureau under Sections 120B and 409 of IPC read with Sections 7, 8, 9, 10, 12(1)(a)(c)(d) and Sections 13(2) and 14 of the Prevention of Corruption

Act. Accused petitioner was also not named in the charge-sheet filed after investigation pursuant to FIR No. 251/2015. Petitioner is widow of Late

Md. Sherkhan, who has no connection with the alleged crime. It has been alleged by the respondent/s that amount of ☐ 2.65 crore was seized in FIR

No. 251/2015 registered under the provisions of Prevention of Corruption Act. Petitioner has been involved in this case only on the basis that she filed

an application in the trial court to get released the amount seized from her husband, as that amount legally belonged to her husband. There is no cogent

and reliable evidence to connect the accused petitioner with the alleged crime. It has also been submitted that on 21.01.2019 learned trial court

proceeding on a complaint filed by the respondent/s, took cognizance against the accused petitioner for offences puniahable under Sections 3 and 4 of

Prevention of Money Laundering Act, 2002 and non bailable warrant was issued against her in the first instance, which was not legally justified. It has

also been contended that she is an old lady suffering from various ailments, regarding which proper documentation has been filed in this case. It has

also been submitted that looking to the present covid-19 pandemic, detention in custody would be hazardous to the health of the accused petitioner,

particularly when no custodial interrogation is required as far as the case of accused petitioner is concerned since all the evidence available in this

case are documentary evidence, which are lying with the respondent Department. 2a. Written submissions have also been filed on behalf of the

accused petitioner. It has been argued that when applied on the touchstone of the guidelines propounded by Hon'ble the Supreme Court, the case of

accused petitioner falls squarely within the category wherein she is clearly entitled for the grant of anticipatory bail. She is an elderly lady of 64 years

of age and suffers from serious ailments. Antecedents of the accused petitioner are clean. Hon'ble apex court has time and again emphasized that role

played by the accused petitioner is a relevant factor for deciding the anticipatory bail application. Accused petitioner was not even made an accused in

the original case emanating from FIR No. 251/2015 registered with the Anti Corruption Bureau against other co-accused persons. Accusations made

against the accused petitioner are frivolous, as can be seen from the record of the case. The sole ground on which she has been roped in by the

respondent Department in this case is that after the death of her husband Late Md. Sherkhan, she submitted an application before the Anti Corruption

Bureau Court under Sections 451 and 452 of CrPC for release of☐ 2.65 crore, which originally belonged to her husband and over which she has a

legal right. It has been vehemently argued that merely on this ground accused petitioner cannot be convicted for offence under the Prevention of

Money Laundering Act. It has also been argued that as per the law propounded by Hon'ble Courts anticipatory bail application is maintainable even

when non bailable warrant has been issued by trial court. In support of his contentions learned counsel for the accused petitioner has placed reliance

on following case laws :-

(i) Siddharam Satlingappa Mhetre v. State of Maharshtra & Others (Criminal Appeal No.2271/2010 arising out of SLP (Cri.) No. 7615/2009)

(ii) Sushila Aggarwal & Others v. State (NCT of Delhi) & Another (SLP (Cri.) Nos. 7281-82/2017, dated 29.01.2020)

(iii) Surendra Dubey vs. State of Chattisgarh (Misc. Criminal Case (A) No. 442/2018, dated 30.07.2018)

(iv) Gopal Mittal v. State of Rajasthan (S.B. Crl. Misc. Bail Application No. 9159/2017, dated 19.07.2017)

(v) Dhirendra Singh @ Chintu v. UOI, dated 12.05.2020

(vi) Tammana Begum v. Umanand Vijay, dated 12.05.2020

(vii) Manju Tanwar v. UOI, dated 17.09.2019

(viii) Deepa Hada v. UOI, dated 23.04.2018

3. On the contrary, learned Additional Solicitor General for the Union of India strongly opposed the bail application and has filed reply on behalf of the

respondent/s to this bail application filed under Section 438 of CrPC.

3a. It has been contended that accused petitioner has directly approached this court for grant of anticipatory bail without preferring the same before

the learned court below. The petitioner is arrayed as an accused under the provisions of Prevention of Money Laundering Act, 2002, which is an

acute economic offence. Economic offences affect the society and economy as a whole and are distinct from other offences under IPC. Economic

offences are committed with pre-designed mindset. Hon'ble Supreme Court of India has categorically held in number of cases that yardstick to be

adopted in dealing with economic offenders would be entirely different than the one need to be adopted in other offences. In Y.S. Jaganmohan Reddy

v. SBI (2013) 7 SCC 439, SFIO v. Nitin Johri (2019) 9 SCC 165 and in State of Gujrat v. Mohanlal Jitmalji Porwal (1987) 2 SCC 364, Hon'ble apex

court has taken similar view because economic offences destroy the very fabric of the society. It has also been argued that accused petitioner has a

history of fleeing away from justice, which is evident from the fact that designated court under the Prevention of Money Laundering Act, 2002 took

cognizance of the matter and issued non bailable warrant way back in January 2019, but the accused is evading the process of law. It has also been

submitted that the order by which designated court took cognizance against the accused petitioner and other co-accused persons, was challenged in

the High Court and thereafter before Hon'ble Supreme Court and the order of the learned trial court has been finally upheld. Thus, the order regarding

cognizance against the accused petitioner finally stands. 3b. Apart from this, anticipatory bail application of other co-accused persons has been

rejected by a coordinate bench of this court on 03.03.2020 and by the apex court on 12.03.2020. Special emphasis has been laid upon judgment passed

by Hon'ble Supreme Court in P. Chidambaram v. Union of India, (2019) 9 SCC 24, wherein the apex court has held as under :-

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic

offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2

SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

3c. Thus, it has been argued that Hon'ble apex court has held that in economic offences, accused is not entitled to anticipatory bail. It has also been

submitted that offence under Prevention of Money Laundering Act is an independent offence and it is not a pre-requisite that there must be a case

against the accused registered under Prevention of Corruption Act because an offence under Prevention of Corruption Act and an offence under

Prevention of Money Laundering Act, are both distinct and independent from each other. Thus, it cannot be said that because accused petitioner was

not named in the FIR registered under Prevention of Corruption Act, she cannot be proceeded against for offence under the provisions of Prevention

of Money Laundering Act.

4. Heard learned counsel for the parties through video conferencing and perused the record.

5. On consideration of arguments/submissions of both the parties, perusal of material on record and looking to the facts and circumstances of the case,

specially to the fact that revision petition challenging the order dated 21.01.2019 passed by the trial court, has already been dismissed by a coordinate

bench of this court as well as by the Hon'ble Supreme Court, similarly situated co-accused have already surrendered before the trial court and looking

to the fact that accused petitioner is involved in serious economic offence involving huge sum of money and keeping in mind the principle of law

enunciated by Hon'ble apex court in P. Chidambaram's case (supra), but without expressing any opinion on the merits of the case, this court does not

deem it to be a fit case to enlarge the accused petitioner on anticipatory bail.

6. Accordingly, the anticipatory bail application is dismissed.

S.B. Criminal Miscellaneous Bail Application No. 5452/2020

1. This Criminal Misc. Bail Application has been brought under Section 438 of Cr.P.C. seeking anticipatory bail in Criminal Case No. 1/2019 pending

before the court of Special Judge, Communal Riot Cases / Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002) Jaipur

Metropolitan.

2. Heard learned counsel for the accused petitioner through video conferencing. He submits that accused petitioner has surrendered before the court

concerned, hence he does not want to press the present bail application filed under Section 438 of CrPC.

3. Accordingly, the bail application is dismissed as not pressed.

4. A copy of this order be placed in the connected file.