(2021) 04 BOM CK 0021

In the Bombay High Court

Case No : Bail Application No.1437 Of 2020

Vijay Narendra Kumar Kothari APPELLANT

Vs

Directorate Of Enforcement And Others RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 3, 4
Indian Penal Code, 1860 — Section 120B, 420, 465, 467, 468

Citation : (2021) 04 BOM CK 0021

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Dr. Sujay Kantawala, Sujit Sahoo, Aditya Talpade, H.S.Venegaonkar, S.R.Agarkar

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. This application was heard on 9th March, 2021. Pending order, applicant moved the Court for making further submissions. Accordingly, he was heard on 17th March, 2021. Again, the applicant moved an application to place on record order passed by the Co-ordinate Bench in Criminal Bail Application No.1322 of 2020.

2. Applicant is seeking his enlargement on bail in Special Case No.09 of 2017 in ECIR/05/MBZO/2016 registered by the Directorate of Enforcement, Bombay for the ofence of money laundering punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 as amended.

3. It is the second bail application. The frst bail application was rejected by this Court vide order dated 29th November, 2019. Grounds urged in support of this application, were also urged in the frst bail application except to say that orders granting bail to co-accused Sanjay Jain on 2nd May, 2018 and Saurabh Pandit on 4th October, 2018 were not brought to the notice of this Court. Thus, applicant

relies on orders granting bail, to co-accused. Yet, another ground is that applicant is in custody since March, 2019 and since investigation is over and trial is not likely to commence in near future, applicant be released on bail on such terms to ensure and secure his presence for the trial. Besides, applicant has also relied on the order of the Co-ordinate Bench of this Court in Criminal Bail Application No.1322 of 2020 in the case of Deepak Kochar v. Directorate of Enforcement.

4. Heard Dr. Sujay Kantawala,the learned counsel for the applicant and Mr. Venegaokar, the learned prosecutor for the respondent no.1.

5. Briefly, stated, prosecution case is that;

(i). On a complaint, fled by the IndusInd Bank, Mumbai, D.B.Marg Police Station, Mumbai, FIR No.365/2015 dated 24.12.2015 was lodged against, M/s. Yogeshwar Diamonds Pvt. Ltd., M/s. Shree Charbhuja Diamonds Pvt. Ltd., M/s. Kanika Gems Pvt. Ltd. and Directors Shri Anil Kumar Moolchand Toshniwal, Sunil Kumar Chokhara and Anil Chokhara under Sections 420, 465, 467, 468 and 120B, of IPC, 1860. Investigation revealed that the accused company and its Directors, remitted Indian Currency to the tune of Rs.304,35,77,609/- (US$ 4,90,11,147.07) illegally abroad by submitting bogus import documents. The case was subsequently transferred to the Economic Ofence Wing, Unit-I Mumbai Police, who registered C.R.No.93/2015 and investigating the case.

(ii). That the said ofences, i.e., Section 420 and 120B of IPC are covered under Part A of Paragraph 1 of the Schedule under the provisions of Prevention of Money Laundering Act, 2002 (PMLA, 2002), as amended (hereinafter referred to as the said Act). Accordingly, the Directorate of Enforcement, MZO recorded an ECIR vide ECIR/05/MZO/2016 dated 11.05.2016 under the provisions of PMLA, 2002 against M/s. Yogeshwar Diamonds Pvt. Ltd., M/s. Shree Charbhuja Diamonds Pvt. Ltd., M/s. Kanika Gems Pvt. Ltd. and its Directors viz. Mr. Anil Kumar Moolchand Toshniwal, Sunil Kumar Chokhara and Anil Chokhara for investigation.

(iii). That investigation resulted into fling of Complaint Case No.09 of 2017 before the Hon'ble Court of Sessions Judge, City Civil and Sessions Court for Greater Bombay at Mumbai, (Designated Court under the Prevention of Money Laundering Act, 2002) in which Vijay Kothari (applicant), Anil Chokara, Sanjay Jain, M/s. Yogeshwar Diamonds Pvt. Ltd., M/s. Shree Charbhuja Diamonds Pvt. Ltd. and M/s. Kanika Gems Pvt. Ltd. were made accused nos.1,2,3,4,5 and 6 respectively;

(iv). The investigation revealed;

(a). that, the Accused Nos.4,5 and 6, fraudulently remitted funds, to the Hong Kong based company by submitting forged bills of entry and other import documents to Indusind Bank Ltd;

(b). That M/s. Yogeshwar Diamonds had remitted a total amount of USD $

21165198.96 equivalent to Indian Rs.131,37,40,510/-; USD $ 1253115.10 equivalent to Rs.7,81,48,789.38 + USD $ 19912083.86 equivalent to Rs.123,55,91,720.62 to Hong Kong based entities/company in the guise of import advance and post import under forged Bill of Entries and bogus Invoices; and

(c). That M/s. Shree Charbhuja remitted a total amount of USD $ 25620839.27 equivalent to Rs.236,12,07,930 (i.e. USD $ 11138245.48 equivalent to Rs.69,18,48,927 as import advance and USD $ 14482593.79 equivalent to Rs.166,93,59,003) to Hong Kong based entities/company in the guise of import advance and post import remittances using forged Bills of Entry and bogus Invoices submitted the bank and

(d). That M/s. Kanika Gems had remitted a total amount of USD $ 24420751.76 equivalent to Indian Rs.1507411522/- i.e. {Advance Import - USD $ 9804282.04 USD (equivalent to Rs.608030398/-) + Post import USD 14616469.72 (equivalent to Rs.89,93,81,124/-)} to Hong Kong based entities/companies in the guise of import advance and post import remittances using forged Bills of Entry and bogus Invoices submitted to the bank and

(v). The Investigation revealed the following facts/material, in respect of Vijay Kothari, Accused No.1-Applicant in Complaint Case No.09 of 2017:

(a). He was the proprietor of M/s. Kothari Impex;

(b). He was one of the Directors in the four companies viz a) M/s. Parasmani Exim Pvt. Ltd., b) M/s. Keshariya Diamonds Pvt. Ltd., c) M/s. Khushi Gems Pvt. Ltd., and d) M/s. Sanskar Exim Pvt. Ltd.;

(c). That during 2013-14, M/s. Kothari Impex and aforesaid four companies, wherein he was director, transferred amounts to the accused companies viz M/s. Yogeshwar Diamonds Pvt. Ltd., M/s. Charbhuja Diamonds Pvt. Ltd., and M/s. Kanika Gems Pvt. Ltd.

(d). That in his capacity as proprietor and director of the above frm/company, he generated huge funds and has also managed various bank accounts with the intention of laundering of funds through dubious companies through scores of such bank accounts controlled by him.

(e). As a result, he has remitted huge funds to Hong Kong based bogus companies.

(f). He has floated various fctitious companies for routing of funds with the help of other co-accused.

(g). The funds amounting to Rs.19,76,89,000/- have been transferred from the aforementioned his frm/companies to the accused companies.

(h). That from his companies huge funds to the tune of Rs.1,52,90,000/- has been transferred to the account of his wife Mrs. Kushboo Kothari;

(I). That his father Shri Narendra Kothari received an amount of Rs.54,00,000/- from the account of M/s. Mangalmurti Diamonds Pvt. Ltd.;

(j). That during the period from 04.08.09 to 21.03.14, his father, Shri Narendra Kothari and his wife have amassed six immovable properties having purchase value INR 55,93,000/-;

(k). That he is the master mind behind the entire criminal act of Money Laundering in this case;

(l). That he has indulged in criminal activities of generation of proceeds of crime by criminal conspiracy, forgery of documents, fraudulent transactions, creating fctitious companies by carrying out criminal activities related to scheduled ofences, as defned in Section 2 (1)(u) of PMLA, 2002.

CONDUCT OF APPLICANT:

6. At the outset, it may be stated that although the ofences under the PML Act was registered in 2017 as applicant was not available for investigation, though process was issued on 19th June, 2017, he had, not joined investigation until he was declared proclaimed ofender on 12th February 2018.

SUBMISSIONS:

7. The learned counsel for the applicant submitted, the co-accused Sanjay Jain and Saurabh Pandit were released on bail on 2nd May, 2018 and 14th October, 2018 respectively, but for some reasons, these two orders were not brought to the notice of the Court when the frst bail application was heard on 29th November, 2019.

.. I have perused the order granting bail to Saurabh Pandit. It appears, from the order that on 24th December, 2015, FIR was registered vide C.R.No.365 of 2015 at the instance of Manager, Indusind Bank under Sections 420, 465, 467, 468, 471 read with 120B of the Indian Penal Code, 1860 against the four companies, its directors as aforesaid. Investigation revealed the sum of Rs.17,82,75,411/- was fraudulently remitted by the accused companies, to M/s. Link Fai Ltd. and M/s. Sky Light Ltd. under the pretext of payment of import of loose and rough diamonds by using fake/forged bill of entries and bogus invoices. Fact revealed, the Saurabh Pandit was director of M/s. Link Fai Limited and M/s. Sky Light Ltd. However, the accusations against the applicant are diferent and in fact, while granting bail to co-accused Saurabh Pandit, Court had observed "Vijay Kothari was king-pin and primary role was attributed to him." In so far as the order granting bail to Sanjay Jain is concerned, it appears, he was working as a accountant in the company M/s. Raghukul Diamonds Ltd. Also records shows, Sanjay Jain had responded to summons issued by the Enforcement Directorate and co-operated in the investigation. Therefore, accusations made against Sanjay Jain and Saurabh Pandit and role attributed to them is quite diferent than the accusations made against this applicant. As it appears from record, the applicant has floated various bogus entities, several money transactions/

transfers, have been traced between the companies/frms owned by applicant and accused companies. Prima-facie, evidence suggests, applicant was managing and controlling fnancial afairs of accused and benefciary companies. Whereas, one co-accused was an employee of a benefciary company and another, was director. Besides, evidence suggests, both co-accused had joined the investigation; soon after they were summoned and co-operated investigation. Thus, in my view, these two orders, granting bail to the co-accused do not further the case of the applicant.

8. Be that as it may, reply fled by the Enforcement Directorate suggests, that the investigation is not complete and non-co-operation of the applicant has resulted into lack of fnancial information available with the respondent in respect of over-seas companies, their bank accounts and fnancial transaction. Prosecution in their reply has submitted that the applicant has not co-operated in respect of fnancial information of over-seas companies; that investigation is still going on and there is likelihood of applicant meddling with the investigation, if released on bail.

9. It may be stated, that economic ofences are to be view seriously as it constitutes class apart and need to be visited with diferent approach in the matter of bail. This Court in the case of Rana Kapur v. Directorate of Enforcement and Anr. in Criminal Bail Application No.4999 of 2020 has observed that since economic ofence involves and causes huge loss to the public funds, it need to be viewed seriously, since it afects economy of the country as a whole.

10. In so far as order granting bail to Deepak Kochar is concerned, therein it is observed, "The transactions in question were for the period of 2009. The entire loan of ICICI Bank was repaid in 2012. Prior to arrest, applicant had appeared before the respondent on several occasions. The arrest was efected 18 months after registration of ECIR. However, herein, applicant, was not available for interrogation since June, 2017 till February, 2018; investigation is in progress; and it could not be completed for want of co-operation of the applicant.

11. Thus, in consideration of the facts of the case and nature of accusations against the applicant, his conduct as noted here-in-above and non-co-operation in the investigation, I am not inclined to release the applicant on bail. Application is, therefore, rejected.

12. It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.