

A DIRECTORATE OF ENFORCEMENT

v.

ADITYA TRIPATHI

(Criminal Appeal No. 1401 of 2023)

B MAY 12, 2023

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

- Prevention of Money Laundering Act, 2002: s. 45 – Enlargement on bail – Sustainability of – Allegations of tempering of bids – Accused chargesheeted u/s. 120-B, 420, 468, 471 IPC and s. 7 rw s. 13(2) of the PC Act, the scheduled offences – Offences under the PML Act, 2002 added later – Enforcement Directorate initiated money laundering investigation – Respondent no. 1 arrested – Thereafter, the High Court enlarged the respondent No.1 on bail – Sustainability of – Held: Not sustainable – High Court did not consider the rigour of s. 45 nor considered the seriousness of the offences alleged against accused for the schedule offences under the PMLA Act, 2002 and that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on – Merely because other accused are acquitted/ discharged, it cannot be a ground not to continue the investigation against respondent No. 1 – Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002 – Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct – Matters remitted back to the High Court for afresh decision on the bail applications – Penal Code, 1860 – ss. 120-B, 420, 468 and 471 – Prevention of Corruption Act, 1988 – s. 7 rw s. 13(2).*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. G 1401 of 2023.

From the Judgment and Order dated 02.03.2021 of the High Court for the State of Telangana at Hyderabad in CRLP No. 1146 of 2021.

With

H Criminal Appeal no.1402 of 2023.

K. M. Nataraj, A.S.G., Mukesh Kumar Maroria, Mukul Singh, S.A. Haseeb, Mrs. Deepavali Dutta, Rajan Kumar Chourasia, Zoheb Hussain, Kannu Agarwal, Sarath Nambiar, Advs. for the Appellant. A

Rakesh Khanna, Aman Lekhi, Sr. Advs., Santosh Kumar Tripathi, Siddharth Krishna Dwivedi, Varun K Chopra, Yugant Sharma, Ayush Jindal, Tushar Gupta, Rohin Oza, M/s. Vkc Law Offices, Advs. for the Respondent. B

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the High Court for the State of Telangana at Hyderabad in Criminal Petition Nos. 1146/2021 and 1147/2021, by which, the High Court has allowed the said bail applications and has directed to enlarge respective respondent No. 1 on bail in connection with the offences under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PML Act, 2002) investigated by the Enforcement Directorate, Hyderabad in F. No. ECIR/HYZO/36/2020 on the file of Metropolitan Sessions Judge, Hyderabad, the Directorate of Enforcement has preferred the present appeals. C D

2. That an FIR No. 12/2019 dated 10.04.2019 was registered by the Economic Offences Wing, Bhopal, naming about 20 persons/companies as accused for the offences punishable under Sections 120-B, 420, 468 and 471 of IPC, Section 66 of the Information Technology Act, 2000 and Section 7(c) read with Section 13(2) of the Prevention of Corruption Act, 1988. It was found in the preliminary enquiry that e-Tender Nos. 91,93, and 94 for total works amounting to Rs. 1769.00 crores of Madhya Pradesh Water Corporation were tempered to change the price bid of M/s GVPR Engineers Limited, M/s The Indian Hume Pipe Company Limited and M/s IMC (sic) Project India Limited to make them the lowest bidders. Subsequent to the registration of the FIR, Economic Offences Wing, Bhopal conducted investigation and filed the chargesheet before the competent court on 04.07.2019. That on study of chargesheet, it was found that the accused have also committed the offences under the PML Act, 2002 as the offences for which they were chargesheeted, namely, Sections 120-B, 420, 468 and 471 of IPC and Section 7 read with Section 13(2) of the PC Act, are also scheduled offences and therefore, the Enforcement Directorate, Hyderabad had G H

- A initiated money laundering investigation in the F. No. ECIR/HYZO/36/2020. That respective respondent No. 1 herein in respective appeals were arrested on 19.01.2021, therefore, they filed the present bail applications before the High Court to enlarge them on bail in connection with the aforesaid investigation/case being investigated by the Enforcement Directorate. By the impugned orders, the High Court has directed to enlarge respondent No. 1 in respective appeals on bail. The impugned orders passed by the High Court enlarging respondent No. 1 in respective appeals on bail in the case being investigated by the Enforcement Directorate, Hyderabad, are the subject matters of present appeals.
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- C 3. Shri K.M. Nataraj, learned ASG, has appeared on behalf of the appellant – Enforcement Directorate and Shri Rakesh Khanna and Shri Aman Lekhi, learned Senior Advocates have appeared on behalf of respective respondent No. 1.
- D 3.1 Shri Nataraj, learned ASG appearing on behalf of the Enforcement Directorate has submitted that in the facts and circumstances of the case the High Court has seriously erred in enlarging respective respondent No. 1 – accused on bail. It is submitted that while enlarging respective respondent No. 1 – accused on bail the High Court has not properly appreciated Section 45 of the PML Act, 2002.
- E 3.2 It is further submitted that the High Court has not properly appreciated and/or considered the seriousness of the offences which are scheduled offences under the PML Act, 2002.
- F 3.3 It is submitted that the High Court has enlarged respective respondent No. 1 on bail solely on the ground that the investigation has been completed and the chargesheet has been filed. It is submitted that however, the High Court has not properly appreciated the fact that the investigation by the Enforcement Directorate is still going on and therefore, it is wrong to say that the investigation has been completed.
- G 4. While opposing the present appeals, learned Senior Advocate(s) appearing on behalf of respective respondent No. 1 have vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in directing to enlarge the accused on bail.
- H 4.1 It is submitted that in the present case so far as the impugned FIR is concerned i.e., for the predicated offences others accused have been acquitted/discharged.

4.2 It is further submitted that as the investigation is over and the chargesheet has been filed, the High Court has rightly enlarged the accused – respective respondent No. 1 on bail. It is submitted that as the accused are on bail since March, 2021, the impugned orders passed by the High Court may not be interfered by this Court at this stage.

5. We have heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that respective respondent No. 1 – accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 reads as under: -

“45. Offences to be cognizable and non-bailable.—

(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

- A (i) the Director; or
 - (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.
- B [(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]
 - (2) The limitation on granting of bail specified in [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”
- D By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002.
 - 6.1 Even otherwise, the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offences under the PML Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly.
 - 6.2 Now so far as the submissions on behalf of the respective respondent No. 1 that respective respondent No. 1 were not named in the FIR with respect to the scheduled offence(s) and/or that all the other accused are discharged/acquitted in so far as the predicated offences are concerned, merely because other accused are acquitted/discharged, it cannot be a ground not to continue the investigation in respect of respective respondent No. 1. An enquiry/investigation is going on against respective respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation for the scheduled offences itself is sufficient at this stage.
 - 6.3 From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that
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chargesheet has been filed against respective respondent No. 1 – accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is till going on.

7. As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove.

8. In view of the above and for the reasons stated above, both these appeals succeed. The impugned judgment(s) and order(s) passed by the High Court in Criminal Petition Nos. 1146/2021 and 1147/2021 enlarging respective respondent No. 1 – accused in respective appeals on bail are hereby quashed and set aside. That respective respondent No. 1 now to surrender before the competent court having jurisdiction or before the concerned jail authority within a period of one week from today. The matters are remitted back to the High Court to consider the bail applications afresh in light of the observations made hereinabove and after respective respondent No. 1 surrenders within a period of one week as ordered above. Present appeals are accordingly allowed to the aforesaid extent.