

Pawan Kant vs Directorate Of Enforcement on 17 November, 2023

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 3387/2023

PAWAN KANT

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DIRECTORATE OF ENFORCEMENT

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Through: Mr. Zoheb Hossain, Sp

Counsel for ED with M

Ms. Manisha and Mr. K

Rakuzhuro, Advocates.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 17.11.2023 CRL.M.A. 31442/2023 (for exemption)

1. Allowed subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 3387/2023

3. By way of the present petition under Article 226 of the Constitution of India, the petitioner seeks directions to the respondent/ Directorate of Enforcement („ED ") for calling all records of ECIR/DLZOI/39/2023 dated This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/11/2023 at 01:21:02 17.07.2023 and quashing the aforesaid ECIR/DLZO-I/39/2023 dated 17.07.2023 and all proceedings emanating therefrom.

4. Issue notice.

5. Learned Special Counsel appearing for the respondent ED accepts notice. He seeks, and is granted, four weeks for filing a reply.

6. Rejoinder thereto, if any, be filed within two weeks thereafter.

7. Accordingly, renotify on 21.03.2024.

CRL.M.A. 31441/2023 (for stay)

8. The present application has been filed under Section 482 of the Code of the Criminal Procedure, 1973 seeking ex-parte ad-interim stay of the proceeding in ECIR/DLZO-I/39/2023 dated 17.07.2023.

9. Learned senior counsels appearing for the applicant/petitioner submit that the proceedings in the said ECIR ought to be stayed against the petitioner as the predicate offence for the said ECIR are the proceedings under Section 135 of the Customs Act, 1962 being Ct. Case No.2012/2022 titled as „DRI v. Salt Experience and Management Pvt. Ltd. & Ors. , which has already been stayed by this Court vide order dated 03.11.2023 in CRL.M.C. 7919/2023 titled as „Pawan Kant v. Directorate of Revenue Intelligence observing that the adjudication proceedings against the petitioner had been dismissed by the Customs Excise and Service Tax Appellate Tribunal [CESTAT] in Appeal No.50497/2022 titled as "Pawan Munjal vs. Commissioner of Customs", and the same has since been affirmed by a Division Bench of this Court vide order dated 05.10.2023 in CUSAA No.3/2023 titled as „Commissioner of Customs, New Customs House, New Delhi vs. Pawan Kant . Thus, relying upon Radhey Shyam Kejriwal v. State of West Bengal (2011) 3 SCC 581, This is a digitally signed order.

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10. Thence relying upon Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929, learned senior counsels for the petitioner submit that the petitioner cannot be prosecuted on notional basis or an assumption that a scheduled offence has been committed. They further submit that once the petitioner stands exonerated by the CESTAT and the proceedings initiated by the Department of Revenue stand stayed by this Court vide order dated 03.11.2023, the proceedings under the PMLA cannot be allowed to continue against the petitioner as the same shall amount to abuse of the process of law.

11. Per Contra, learned special counsel appearing for the respondent ED on advance notice opposes grant of stay by drawing attention of this Court to the order dated 05.10.2023 passed by the Division Bench of this Court in CUSAA No.3/2023 to submit that the said order is irrelevant to the present

proceedings as the subject of consideration before the Division Bench was only with respect to the jurisdiction of the CESTAT, which is not in consideration in the present matter.

12. Further, referring to paragraph 16 of the order dated 03.11.2023 passed by this Court in CRL.M.C.7919/2023, learned special counsel for the respondent ED submits that the same is also of no avail to the petitioner as by virtue of the same, this Court has only stayed "... ..the operation of the impugned order dated 01.07.2023 passed by the Ld. Additional Chief Metropolitan Magistrate-01, Patiala House Courts, New This is a digitally signed order.

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13. Drawing attention of this Court to Section 2(3A) of The Customs Act, 1962, learned special counsel for the respondent ED then submits that the petitioner herein is a „beneficial owner . Relying upon Section 3 of PMLA, he further submits that the petitioner is guilty of the offence of money-laundering. Lastly, relying upon Section 44 Explanation (i) of PMLA, he submits that the present proceedings can continue as the proceedings under the PMLA are not dependent upon the proceedings and orders passed in the scheduled offence. He, thus, submits that the offence committed by the petitioner under the PMLA is an independent offence and thus the exoneration by the CESTAT shall not affect the proceedings under the PMLA. Further, relying upon Monica Bedi v. State of Andhra Pradesh (2011) 1 SCC 284, he submits that in any event, there is no bar on two or more prosecutions arising out of the same set of facts, if it can be shown that the ingredients of the two different offences, have been made out.

14. He further submits that the petitioner is not covered by the judgment passed in Vijay Madanlal Choudhary (supra) as the offence under the PMLA being a standalone offence is not predicated on the offence committed under the Customs Act. He further submits that in any case, the benefit can only be given when the accused is discharged, whereas in the present case, only the proceedings have been stayed, and the petitioner has not been finally discharged/ acquitted in Ct. Case No.2012/2022 pending before the ACMM-01, Patiala House Courts.

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15. Further, drawing the attention of this Court to paragraphs a(i) and a(iv) of the examination of Mr. Hemant Dahiya under Section 50 of the PMLA in the Provisional Attachment Order No.06/2023 dated 03.11.2023 issued by the Deputy Director, ED, he submits that the proximity of the petitioner with the main carrier of the foreign currency i.e. Mr. Amit Bali has been established which is prima facie sufficient to proceed against the petitioner. He further submits that the present proceedings are entirely different from those pending under the Customs Act, 1962 as the ED is

concerned with the proceeds of crime amounting to Rs.41,47,56,547/- which need to be attached in terms of Section 2(1)(u) of the PMLA, and not the puny amount of Rs.81,01,421/- of which cognizance has been taken under the Customs Act, 1962.

16. Lastly, as per the learned special counsel for the respondent ED, the present petition challenging the issuance of summons qua the presence of the petitioner herein being pre-mature, is not maintainable, at this stage.

17. I have heard the learned senior counsels for the petitioner and the learned special counsel for the respondent ED and have perused the documents on record and judgments cited by both sides.

18. A perusal of the Provisional Attachment Order No.06/2023 dated 03.11.2023 issued by the Deputy Director, ED, particularly the material placed before the Authority (para 2(i)) and the cause of action under the PMLA (para 4.1) reveals that the present ECIR dated 17.07.2023 was recorded by the respondent ED, as Section 135 of the Customs Act, 1962 is a scheduled offence under the PMLA, whereunder the complaint was registered for the illicit export of foreign currency.

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19. The facts also reveal that dismissal of the adjudication proceedings against the petitioner vide order dated 28.03.2022 in Appeal No.50497/2022 titled as Pawan Munjal v. Commissioner of Customs passed by the CESTAT has led to the petitioner being absolved of all charges. In fact, the Division Bench of this Court in CUSAA No.3/2023 has affirmed the same vide order dated 05.10.2023.

20. It is also to be noted that this Court, after taking note of the order passed by the CESTAT and by the Division Bench of this Court, has already passed the order dated 03.11.2023 whereby the proceedings in Ct. Case No.2012/2022 and all proceedings emanating therefrom pending before the ACMM-01, Patiala House Court, have been stayed.

21. Considering what is borne out from the aforesaid and finding merit in the submissions made by the learned senior counsels for the petitioner, especially the peculiar facts and circumstances involving the common set of facts forming the genesis of all the three proceedings, being the proceedings before the CESTAT, the complaint case pending before the learned ACMM-01, Patiala House Court and the present ECIR, against the petitioner and taking note of the earlier order dated 03.11.2023 passed by this Court wherein the proceedings initiated by the Department of Revenue have been stayed, this Court is of the prima facie opinion that there is sufficient materials to stay the proceedings qua the petitioner.

22. Accordingly, till the next date of hearing, ECIR/DLZO-I/39/2023 dated 17.07.2023 and all proceedings emanating therefrom, including the summoning order dated 10.11.2023, shall remain

stayed qua the petitioner.

23. Needless to say, respondent ED shall be free to proceed with the proceedings emanating from ECIR/DLZO-I/39/2023 against all the other This is a digitally signed order.

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24. Renotify on 21.03.2024.

SAURABH BANERJEE, J NOVEMBER 17, 2023/rr This is a digitally signed order.

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