

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 46 OF 2023**

Ankur alias Rahul Khanna,
Son of Shri Lalit Mohan Khanna,
36 years, Resident of: Sunny Towers, 43,
Ashotosh Choudhury Avenue, Kolkata, West
Bengal — 700019 and presently Residing at
Mayfair Hideaway Spa Resort, 333, 1 Rangali,
Betul Bridge, Velim, Goa 403723 Versus
Directorate of Enforcement, Panaji Zonal
Office, 1 and 2TM Floor, LIC Building, Patto
Plaza, Panaji, Goa — 403001 ... Petitioner.

Versus

Directorate of Enforcement,
Panaji Zonal Office,
1st and 2nd Floor, LIC Building,
Patto Plaza, Panaji, Goa. 403 001Respondent.

**WITH
CRIMINAL WRIT PETITION NO. 47 OF 2023**

Hardeep Singh
son of Shri Harcharan Singh, aged
37 years resident of Flat No.B-501/502,
Bhuvneshwari Apartment, 36 Palm
Avenue, Kolkata, West Bengal,
and presently residing at
Fenicia Villas, 27/1G, Sodiem,
Siolim, Goa 403517 Petitioner.

Versus

Directorate of Enforcement,
Panaji Zonal Office, 1st and
2nd Floor, LIC Building, Patto
Plaza, Panaji, Goa. 403 001

..... Respondent

Mr Dattaprasad Lawande with Mr Ashish Kuncoliencar
Advocates for the Petitioners.

Mr P. Karpe, Special Public Prosecutor for the Respondent.

CORAM : M. S. SONAK &
VALMIKI SA MENEZES, JJ.

DATE : 24th APRIL 2023

ORAL JUDGMENT : (Per M.S. Sonak, J.)

- 1.** Heard Mr Dattaprasad Lawande with Mr Ashish Kuncoliencar for the Petitioners and Mr Karpe for the Respondent.
- 2.** As substantially common questions of law and fact arise in both these Petitions, the learned Counsel for the parties agree that a common judgment and order can dispose of both these Petitions.
- 3.** Accordingly, Rule in both these Petitions. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
- 4.** In both these Petitions, the Petitioners seek quashing of ECIR No. ECIR/PJZO/03/2022 dated 28/1/2022 registered under the Prevention of Money Laundering Act, 2002 (PMLA) and the proceedings in PMLA No.01/2022 pending on the file of Additional

Sessions Judge and Special Court under PMLA 2000, at Mapusa, Goa. The Petitioners also seek quashing of the entire proceedings, including attachment proceedings initiated under ECIR No. ECIR/PJZO/03/2022 dated 28/1/2022.

5. On 22/1/2022, an FIR No. 10/2022 was registered by Porvorim Police Station, Goa, under Sections 420, 409, 120-B read with Section 34 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Goa Public Gambling Act, 1976 along with Section 66-D of the Information Technology Act, 2000, against Rajnish Kumar, Shashank Siddharth and Anup Palod. These three persons were arrested, and investigations were handed over to the Crime Branch at Ribandar. It is pertinent to note that the Petitioners were not named in FIR No.10/2022.

6. Based upon FIR No.10/22, the Directorate of Enforcement, Panaji Zonal Office registered Enforcement Case Information Report (ECIR) bearing No. ECIR/PJZO/03/2022 against the three persons in FIR No.10/2022. Out of the offences alleged against the three accused persons in FIR No.10/2022 and the impugned ECIR, only Sections 420 and 120-B of IPC are scheduled offences under the PMLA.

7. However, on 6/4/2022, the Petitioners' premises were raided, and the Petitioners were placed under arrest on 7/4/2022. Bail

applications filed by both the Petitioners were rejected by the PMLA Court on 25/4/2022. On 6/5/2022, the Petitioners took out proceedings before this Court for bail. However, on 3/6/2022, a prosecution complaint under Section 45 of the PMLA was filed against the Petitioners for the commission of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA. On 17/6/2022, the PMLA Court took cognizance of the offence under Section 3, read with Section 4 of the PMLA against the Petitioners. On 22/6/2022, this Court rejected the Petitioners' bail application by observing that the investigations were still in progress.

8. However, on 23/12/2022, the Investigating Officer, Crime Branch, Ribandar filed a Charge-sheet No. 104/2022 invoking only Sections 3 and 4 of the Goa Public Gambling Act, 1976 against the three accused persons named in FIR No.10/2022. Significantly, upon investigations, the I.O. dropped the charges of scheduled offenses under sections 420 and 120-B of the IPC against the three accused persons. Even, the other offenses under Sections 408 of the IPC and Section 66-D of the Information Technology Act, 2000, were deleted.

9. Therefore, the Petitioners now contend that there was no scheduled offence against them under the PMLA, nor were they shown as accused persons in the FIR No.10/22. This position is clear

from the charge sheet filed by the Crime Branch, Goa Police under FIR No.10/2022 (Annexure "E" at pages 179-241 of the Paper Book).

10. Accordingly, the Petitioners again applied for and were released on bail by this Court vide order dated 9/1/2023. This Court took cognizance that no charge sheet was filed on the scheduled offences under the PMLA after concluding the investigations in FIR No.10/2022.

11. On 15/3/2023, the Enforcement Directorate summoned the Petitioners to appear in their Office on 17/3/2023. The Petitioners contend that since no scheduled offences were alleged against them and even though more than a year had elapsed after filing the prosecution complaint against them, no summons could be issued to the Petitioners under the PMLA.

12. Mr Lawande, the learned Counsel for the Petitioners, submitted that given the observations of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and ors. Vs. Union of India and ors.*- Special Leave Petition (Criminal) No.4634 of 2014, decided on 27/7/2022, there could be no prosecution under the PMLA 2002 if the persons in question were not prosecuted for the scheduled offences in the PMLA 2002. Mr Lawande relied upon *Indrani Patnaik vs Directorate of Enforcement and ors.* —Writ Petition

(Civil) No.368/2021 in which the Hon'ble Supreme Court, following *Vijay Madanlal Choudhary* (supra), quashed the prosecution complaint as the Petitioners therein were discharged of the scheduled offences.

13. Mr Lawande also relied upon the decision of this Court in *Naresh Goyal vs The Directorate of Enforcement and anr.* — Criminal Writ Petition No. 4037/2022, where the ECIR was quashed because the Police had filed a closure report regarding the scheduled offence, and given the settled law that in the absence of any scheduled offence, no prosecution under the PMLA 2002 could be launched.

14. Based upon the above, Mr Lawande submitted that the impugned ECIR must be quashed.

15. Mr Karpe learned Standing Counsel referred to the reply on behalf of the Assistant Director, Directorate of Enforcement, Panaji Zonal Office, Goa, and urged that these Petitions may be dismissed. He submitted that even though the charge sheet filed against the accused persons under FIR No.10/2022 may not have referred to any scheduled offence under the PMLA, the Crime Branch, vide communication dated 20/4/2023, had informed the Enforcement Directorate that further investigation has been taken up in Porvorim P.S. Cr. No.10/2022 and C.C. No. AOA/572/P.G./22/F and an

appropriate report will be filed after the completion of the investigation. Mr Karpe, based upon the communication dated 20/4/2023, submitted that the present Petitions were premature because, if, after investigation, the complicity of the Petitioners in the commission of any scheduled offence was to be discovered, an anomalous situation would, perhaps, arise. Mr Karpe, therefore, submits that these Petitions may be dismissed or, at least, deferred until completion of the investigation based upon additional material supplied by the Enforcement Directorate to the Crime Branch.

16. The rival contentions now fall for our determination.

17. The record clearly shows that the Petitioners were not named in the FIR No.10/2022 with the Crime Branch or the Porvorim P.S. Cr. No.10/2022. In this FIR or the criminal case, the Crime Branch had initially alleged that three named accused persons (but not the Petitioners) had allegedly committed offences under Sections 420, 408, 120-B, read with Section 34 of IPC and Sections 3 and 4 of the Goa Public Gambling Act, 1976, along with Section 66-D of the Information Technology Act, 2000.

18. However, upon investigation into the above FIR, the Crime Branch filed a charge sheet before the competent Court, invoking only the provisions of Sections 3 and 4 of the Goa Public Gambling Act, 1976. Accordingly, the offences under Sections 408, 420, and

120-B of IPC were dropped. So also, the offence under Section 66-D of the Information Technology Act, 2000 was dropped. Thus, it is clear that the scheduled offences under Sections 420 and 120-B of IPC were dropped. Therefore, no scheduled offense was alleged against the Petitioners in the prosecution launched. This is evident from Annexure E's charge sheet, pages 179-241.

19. In *Vijay Madanlal Choudhary* (supra), the Hon'ble Supreme Court, in the context of attachment of property, held that it is only such property which is derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. Therefore, the Authorities under the PLMA 2002 cannot act against any person for money laundering on the assumption that a scheduled offence has been committed unless the same is registered with the jurisdictional Police or pending inquiry/trial, including by way of criminal complaint before the competent forum. The Hon'ble Supreme Court held that taking any other view would be rewriting of these provisions and disregarding express language of the definition clause "proceeds of crime", as it obtains now.

20. The Hon'ble Supreme Court also considered whether the offence under Section 3 of PMLA is a standalone offence. The Court held that it depends on the wrongful and illegal gain of property due to criminal activity relating to a scheduled offence. Therefore, in the

event of acquittal of the person concerned or being absolved from the allegation of criminal activity relating to a scheduled offence, the property attached cannot be regarded as either proceeds of crime or crime property. The Court then would be obliged to return such property. The Hon'ble Supreme Court also held that nuanced distinction must be kept in mind that to initiate prosecution for an offense under Section 3 of the PMLA 2002, registration of scheduled offense is a prerequisite. Still, for initiating provisional attachment action under Section 5, there need not be a pre-registered criminal case concerning the scheduled offence.

21. Finally, the Hon'ble Supreme Court has recorded its conclusions in paragraph 187. The conclusion recorded in paragraph 187(v)(d) is relevant to the present context and, therefore, the same is transcribed below for the convenience of reference :

“187(v)...(d). The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional Police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the

Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

22. Therefore, based upon *Vijay Madanlal Choudhary* (supra), a case is made out for a grant of relief to the Petitioners now that it is clear that there is no prosecution against the Petitioners for any scheduled offense under the PMLA 2002. Based upon the communication dated 20/4/2023, addressed by the Crime Branch to the Enforcement Directorate, no case is made to dismiss these Petitions or defer hearings therein.

23. The communication dated 20/4/2023, addressed by the Superintendent of Police (Crime) to the Joint Director, Enforcement Directorate, reads as follows :

*"Office of the Superintendent of Police,
Ribandar, Tiswadi, -Goa 403006*

No. S.P./Crime/269/2023 Dated: 20/04/2023

*To,
The Joint Director,
Enforcement Directorate, 1st & 2^o floor,
Jeevan Vishwas, LIC Building, EDC Complex,
Patto Plaza, Panaji-Goa.*

*Sub: Submission of status report in Porvorim P.S.Cr.
No. 10/2022 u/s 3, 4 of Gambling Act and C.C.No,
AOA/572/P.G./22/F.*

Sir,

With reference to the above, I have to submit that your letter has been received by this Office and presently further investigation has been taken up in Porvorim P.S.Cr. No. 10/2022 Act and C.C.No, AOA/572/P.G./22F.

The appropriate report will be filed after completion of investigation.

This is for information and perusal please.

Yours faithfully,

Sd/-

*Superintendent of Police (Crime)
Ribander, Panaji - Goa.”*

24. The above communication only states that the Crime Branch has received the status report furnished by the Enforcement Directorate. Further investigations have been taken up in Porvorim P.S. Cr. No.10/2022 and C.C.No. AOA/572/P.G./22/F. The communication also states that an appropriate report will be filed after the completion of the investigation. However, it is clear that at least the Petitioners are not yet charged with commissioning any scheduled offences under the PMLA 2002 .

25. As and when investigations are completed, and further, if the Petitioners are implicated for their involvement in any of the scheduled offences, the Respondent will have the liberty to seek revival of the PMLA proceedings by taking appropriate steps. However, based on the communication dated 20/4/2023, no case has been made to deny relief to the Petitioners.

26. In *Indrani Patnaik* (supra), the Hon'ble Supreme Court, by relying upon the conclusion in paragraph 187(v)(d) of the decision in *Vijay Madanlal Choudhary & ors.* (supra), held that the record as it stood, disclosed that the Petitioners stand discharged of the scheduled offence and, therefore, because of the law declared in *Vijay Madanlal Choudhary & ors.* (supra), no question could arise of their being prosecuted for the illegal gain of property due to the criminal activity relating to the alleged scheduled offence. That being the position, the Hon'ble Supreme Court found no reason to allow further proceedings against the Petitioners under the PMLA.

27. However, the learned Additional Solicitor General submitted that the High Court order discharging the Petitioners of the scheduled offences might be challenged further. He had no instructions on whether the prosecuting agency had already challenged the same. Taking note of this submission of the learned Additional Solicitor General, and in the interest of justice, the Hon'ble Supreme Court, while quashing the proceeding under the PMLA against the Petitioners, reserved liberty to the Enforcement Directorate for seeking revival of the proceeding under the PMLA if the order discharging the Petitioners were to be annulled or in any manner, varied and if there be any legitimate ground to proceed under the PMLA.

28. Therefore, by granting a similar opportunity to the Enforcement Directorate in the present case, should the report referred to in the communication dated 20/4/2023 disclose the complicity of the Petitioners in any scheduled offences under the PMLA 2002, we could quash the proceedings under the PMLA because, at least, at present, there is no prosecution pending against the Petitioners for any scheduled offences under the PMLA 2002.

29. In *Naresh Goyal* (supra), decided by a coordinate Bench on 23/2/2023, the issue was whether the ECIR registered by the Enforcement Directorate survives once no prosecution for the scheduled offences was pending against the Petitioner. The Petitioner had contended that the prosecution for a scheduled offence is a condition precedent for initiating E.D. proceedings under the PMLA 2002.

30. The Division Bench found that a 'C' summary report had been filed regards the scheduled offences. The Division Bench relied upon *State of Maharashtra vs. Bhimrao Vithal Jadhav*, Second Appeal No.72/1967 decided on 21/9/1974, where it had been observed that granting of a 'C' summary amounts to an acquittal. After quoting from *Vijay Madanlal Choudhary* (supra), the Division Bench concluded that if a person is discharged or acquitted of a scheduled offence by a competent Court, there could be no offence of money laundering against him. Finally, the Division

Bench held that since no scheduled offence was alleged against the Petitioner because of the closure report filed by the Police, the impugned FIR registered by the Enforcement Directorate would not survive, and the said ECIR would have to be quashed, and set aside.

31. The position in the present proceedings is not very different from that of *Naresh Goyal* (supra) or *Indrani Patnaik* (supra). The observations and conclusions in *Vijay Madanlal Choudhary* (supra) also support the Petitioners. Mr Karpe's apprehension can be addressed by granting the Enforcement Directorate liberty similar to the one granted by the Hon'ble Supreme Court in *Indrani Patnaik* (supra).

32. Therefore, for all the above reasons, both these Petitions are allowed, and the Rule is made absolute in terms of prayer clauses (a), (b), and (c) thereof. This means that the impugned ECIR No. Accordingly, ECIR/PJZO/03/2022, dated 28/1/2022, concerning the Petitioners, is quashed, and all proceedings arising therefrom are also quashed. In particular, the prosecution complaint dated 3/6/2022 pending on the file of Additional Sessions Judge and Special Court under the PMLA 2002, at Mapusa, Goa, is also quashed. Attachment proceedings under the impugned ECIR are also quashed.

33. However, liberty is granted to the Respondent-Enforcement Directorate to revive the above proceedings if and when any material is found either as referred to in Crime Branch communication dated 20/4/2023 or otherwise indicating the involvement of the Petitioners in any scheduled offences under the PMLA 2002.

34. Therefore, with the liberty above, the Rule in both these Petitions is made absolute and disposed of. There shall be no order for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.