

Chandra Prakash Khandelwal vs Directorate Of Enforcement on 23 February, 2023

Author: Yogesh Khanna

Bench: Yogesh Khanna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14

Pronounced on: 23

BAIL APPLN. 2470/2022

CHANDRA PRAKASH KHANDELWAL

Through:

Mr.Dayan Kri
with Mr.Manu
Jain, Mr.Anu
Khurana,
Mr.Shiv Joha
Kale, Mr.
Mr.Somit Kum
Ms.Sanjana M

versus

DIRECTORATE OF ENFORCEMENT

Through:

Mr.Zoheb Hos
with Mr.
Mr.Siddharth
Mr.Kavish Ga
IO M L Meena

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed for grant of bail to the applicant herein who is in judicial custody for the last eight months.

2. The respondent herein is investigating mainly (a) funds from one Prateek Kumar, his group companies and Mr.Shankarrao Borkar, his family members and his group companies to DDPL and Unicorn and other transactions connected with PACL (b) investments by M/s.Systematix Ventures Capital Trust (SVCT) in two companies namely M/s.DDPL Global Infrastructure Private Limited (DDPL) and M/s.Unicorn Infra Projects and Estates Private Limited (Unicorn); (c) certain transactions in relation to the sale of shares between SVCT and one Trinity Investments Private Limited (Trinity).

3. It is the submission of the learned SPP for the respondent the facts would disclose the petitioner was involved in dealing with the proceeds of crime and in transferring of funds of M/s.PACL through various companies and making transactions of purchasing of properties etc. in the manner stated herein below.

4. It is stated M/s.PACL has transferred Rs.101 crores to Borker Rao's company; Rs.2285 crores to Prateek Group of Companies and Rs.110 crores to 25 companies which then gave the said amount to M/s.Systematix Venture Capital Trust (SVCT). It is the case of the respondent out of Rs.101 crores, the Borker Rao's Company transferred Rs.26 crores to M/s.DDPL and M/s.Unicorn; Prateek Group transferred Rs.94 crores to them and the 25 companies of associated companies of M/s.PACL transferred Rs.110 crores to M/s. DDPL and M/s.Unicorn. It is argued even though the petitioner allegedly joined the group in the year 2012 and left them in the year 2016 but during this entire period he handled these proceeds of crime and transfers were made at his instance and SVCT sold its shares in M/s.DDPL and M/s.Unicorn to a company named M/s.Trinity, owned by brother in law of this applicant, though M/s.Trinity had no money and it was plying from its registered office at a residence.

5. M/s.Prateek Group also had shares in M/s.DDPL and in M/s.Unicorn which he got transferred on 09.12.2015 to M/s.First Virasat and on 22.03.2016 were then transferred to M/s.Trinity at the asking of this applicant. The statement of Manoj Gupta, the brother in law of the applicant was recorded who stated he was like a son to the applicant and whatever was done was at the instance of this applicant and the money which M/s.Trinity got to purchase the shares came from M/s.SVCT, which was in control of the present petitioner. Thus, this applicant was in control of M/s.Trinity; M/s.DDPL and M/s.Unicorn.

6. The learned SPP referred to the statements under Section 50 of PMLA and to questions put to Manoj Gupta; to the present petitioner and other witnesses to show the petitioner was dealing with the proceeds of crime and everything was going on as per his advice and he was having conclusive knowledge of the layers of crime and the return of Rs.110 crores was only at the instance of Lodha Committee and it would not reduce his crime. It is submitted though the petitioner has alleged he had nothing to do with M/s.PACL but the statement of witnesses as well as his own statement would reveal he was aware of the proceeds of crime of M/s.PACL and was dealing with it. Between 2009-15 M/s.PACL had transferred Rs.219 crores to M/s.B&B Group on the pretext of bogus land development charges; found to be bogus by the income tax authorities and M/s.B&B transferred Rs.38.32 crores to M/s.Dhananjay; managed and controlled by this applicant which further transferred Rs.26.62 crores in the year 2013-15 to M/s.Superstar of which the accused is promoter/controller and further Rs.1.32 crores to M/s. Roister, which purchased the property in the name of daughter of this applicant. It is stated funds were transferred to M/s.B&B and M/s.Superstar Exports at the behest of this applicant, thus, the present applicant handled the proceeds of crime and still the investigation of M/s.B&B is pending and there are allegations of tempering of evidence and influencing the witnesses per para nos.31,34 and 35 of the reply filed.

7. The learned SPP for CBI argued from the earlier conduct of the petitioner it is revealed he has been managing with the proceeds of crime as late as 2017. He then referred to Lodha Committee

Report which show the money he received from 25 companies of M/s.PACL and was managing the same.

8. The learned SPP also referred to an order dated 06.10.2021 of the Supreme Court in Civil Appeal No.13301/2015 as under:

"8. The above extract indicates that the Committee has found that PACL had transferred Rs 110.95 crores to five companies, which in turn had transferred the funds to twenty five entities, who were associates of PACL. This amount was invested in Scheme I of Systematix, which in turn had invested it in the equity shares and OFCDs of DDPL and Unicorn, alleged to be associates of PACL. Of the above amount of Rs 110.95 crores, the Committee has, thus far, recovered Rs 42.24 crores from Systematix and recovery proceedings have been initiated for recovering an amount of Rs 19.04 crores, which was repaid by Systematix to twenty five associate companies of PACL. SEBI initiated action for the recovery of the remaining amount of Rs 49.67 crores in order to implement the directions issued by this Court under Article 142 of the Constitution on 25 July 2016 and 4 August 2017."

9. It was argued by the learned SPP the provisions of Section 19 PMLA are thus satisfied in the present matter and when the first complaint was filed, all the directors of M/s.PACL were in judicial custody in a scheduled offence and therefore were not arrested in the present matter. It is submitted since there is no illegality alleged under Section 19 of PMLA, hence Section 45 PMLA would apply and only if the threshold of Section 45 PMLA is crossed, the bail can be granted. The relevant portion of Section 45 of PMLA is as under:

"45. Offences to be cognizable and non-bailable.--

(1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule 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:

10. It was argued the limitations under Section 45 (supra) are in addition to the conditions of bail under the Cr.P.C.

11. Reference was made to CBI vs. Vijay Sai Reddy (2013) 7 SCC 452 and Dr.Ashok Singhvi vs. Union of India 2020 SCC OnLine Raj 1075, to say grant of bail to co-accused is not a ground to grant bail;

Ram Narain Popli vs. Central Bureau of Investigation (2003) 3 SCC 641, to say repayment is not a ground to prove innocence of accused; Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46, to say statements under Section 50 of the Act are admissible in evidence and UOI Vs. Rattan Mallik @ Habul (2009) 2 SCC 624 to say reasonable grounds means more than prima facie grounds.

12. Heard.

13. Admittedly, the subject ECIR was registered by the respondent on 26.07.2016 against M/s. Pearls Golden Forest Limited (PGF), M/s. Pearl Agrotek Corporation Limited (PACL); and certain directors of PGF and PACL.

14. Admittedly, the Petitioner is not named in the ECIR and has been cooperating with the respondent since 2016. All other main accused of scheduled offence and offence of money laundering have been either granted bail or not arrested. PACL was declared to be running an illegal CIS by the SEBI on 22.08.2014. This culminated into a series of proceeding and the Hon'ble Supreme Court vide order dated 02.02.2016 in Civil Appeal No.13301 of 2015- Subrata Bhattacharya Versus Securities and Exchange Board of India & Ors. devised a mandatory mechanism in PACL matters by constituting Justice Lodha Committee for disposing of the land purchased by the Company so the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land.

15. In compliance with the special mechanism implemented by the Hon'ble Supreme Court, SVCT had secured an amount of Rs.42.24 Crores.

16. It is alleged the petitioner, time and again, as and when directed, had submitted various documents to the respondent. It is alleged there has not been any allegation of tampering with evidence or influencing witnesses. In fact, all the evidence and information (including digital devices) are in the custody of the Respondent which is documentary in nature. It is alleged, the petitioner was illegally arrested on 22.06.2022 and the transactions complained of against the petitioner date back to the year 2012.

17. Admittedly, the petitioner is not an accused in the predicated chargesheet filed by the CBI and nor is shown in as accused in its supplementary chargesheet. Even in the original complaint of ED he has not been named as accused. It is stated the Pearl Group people were never arrested or granted bail in this ECIR and only present applicant was arrested.

18. It is alleged several intermediary companies viz. associated companies of Pearl Group (PACL) and/ or its direct subsidiary and indirect subsidiary companies were never made an accused in the present case. Admittedly, on 28.11.2003 the Rajasthan High Court had taken a view PACL was not operating a corrective investment scheme and on 26.02.2013 the Hon'ble Supreme Court dealing with similar allegation had refused a blanket order on receipts of PACL. Though it set aside the Rajasthan High Court's judgment but did not put any restraint upon to PACL to receive money though SEBI was asked to look into the transactions. Thus, upto 2013 there was no restriction for PACL to receive investment. On 12.03.2013 the Supreme Court while dealing with one of the sister

company of PACL had directed CBI investigation. It was only on 22.08.2014 PACL was declared as a corrective investment scheme by SEBI.

19. It was argued the petitioner's company if collected money from PACL prior to 2014 was not aware of any litigation or action taken by SEBI against PACL. It is argued there are four transactions alleged against the present applicant's company of which he was made a nominee director in the year 2012. It is submitted the CBI firstly identified ten companies of PACL relating to allegations qua transfer of loan; then identified 26 direct and 126 indirect subsidiaries and the petitioner's company had no transaction with them. There were allegations of diversion of bogus land development charges and diversion of funds to Australia for purchase of hotels and such charges also do not relate to petitioner herein. Further qua bogus land development charges there was no reference to the petitioner's company.

20. It is submitted the action was not taken upon the intermediary companies then how can action could be taken against an investment company which is down in the line, more specifically when the investment were accepted prior to 2014 when till that time the PACL was not declared as a corrective investment scheme.

21. In CBI chargesheet the CBI had referred to ten companies at page 14; ten companies in para 92 of page 76; 26 direct subsidiary companies in para 123 and 126 indirect subsidiary companies-entities and the petitioner allegedly had not been dealing with either of them. The allegations were Rs.12000 crores were paid to them and there was no allegation the petitioner being a part of the same. The allegations are a sum of Rs.12,455.94 crores were diverted as agricultural land development charges and the same were also not related to the petitioner herein.

22. It was argued the CBI not only investigated the crime but also the diversion of money including to a foreign company and each head of diversion and/or its beneficiaries; the petitioner did not figure anywhere. Even the supplementary chargesheet filed on 31.12.2021 does not speak about the investment of the petitioner per para 5.9, 5.10 at page 310 and para 7.1 at page 314 and also the allegations at page 334 qua diversion to 42 associated companies of an amount of Rs.2,063,12,93,292/-. None of these companies are involved in ED.

23. It is submitted by the learned senior counsel for the petitioner, the petitioner is behind bars because of four transactions showing the flow of money received in M/s.DDPL and M/s.Unicorn from M/s.PACL through the intermediaries. In first such transaction admittedly the money was received from Borkar's family and Ankush P.Yadav in M/s.DDPL from May, 2009 to March, 2013 and whereas the petitioner joined M/s.DDPL only on 11.09.2012 as an investor non-executive director. Admittedly, Mr.Shankarrao Borkar or his related entities including Mr.Ankush P.Yadav are not named as accused either by the ED or in the supplementary chargesheet filed by CBI. Similarly in second transaction the flow is from M/s.PACL to Mr.Prateek Kumar Group of companies and thereafter to M/s.DDPL. The allegations are the total amount received by M/s.DDPL and its associates was Rs.94,61,41,634/- between 25.02.2009 to 22.08.2012 and whereas Rs.80.00 crores have been returned to the companies from which such funds were received and that only Rs.50.00 lacs was received from M/s.Synergyone Infradevelopers Pvt. Ltd. in M/s.Unicorn on 08.01.2013 and

whereas the petitioner became non-executive nominee director only on 11.09.2012.

24. Admittedly, the transactions executed between M/s.PACL and Mr.Prateek Kumar are not identified in the CBI chargesheet. Even otherwise, the land which was purchased from such money is still existing and the petitioner undertakes not to deal in it till further orders; despite the fact Rs.80.00 crores has been returned.

25. In third transaction of flow of fund concerning 25 companies/intermediaries, the allegation is an amount of Rs.110 crores was received by the companies wherein the petitioner acted as an investment non-executive director but admittedly such amount has since been returned as per direction of the Hon'ble Supreme Court passed in C.A.No.1331/2015. Interestingly, these transactions are also not identified in the chargesheet filed by the CBI and its supplementary chargesheet and neither the five companies nor the twenty five companies mentioned in the direct and indirect subsidiaries were investigated.

26. Admittedly, vide order dated 28.11.2013 passed by the High Court of Rajasthan wherein M/s.PACL was declared not to be operating an illegal CIS was still in operation and even vide order dated 26.02.2013, the Hon'ble Supreme Court did not restraint M/s.PACL from continuing its operations and rather directed SEBI to look into it. The learned senior counsel for the petitioner referred to annexure P56 viz. a letter dated 10.02.2022 of SEBI to show an amount has since been deposited by the petitioner's company.

27. The last transaction was qua flow of fund from M/s.PACL to M/s.B&B; M/s.Mahaveer Infraengineering and M/s.Aravinda Infrastructure Pvt. Ltd. was further seen downwards. M/s.PACL had transactions of Rs.33.00 crores but whereas the petitioner had transaction worth Rs.60.00 crores with Mr.Dhananjay and he allegedly had no information as to if the amount coming to Mr.Dhananjay was from M/s.PACL.

28. Moreso, M/s.B&B; M/s.Mahaveer Infraengineering and M/s.Aravinda Infrastructure Pvt. Ltd. were not made an accused by the ED. Further the money transferred by M/s.PACL to M/s.B&B if was a part of predicated offence is not concluded. Neither the ED nor the CBI had named M/s.B&B as accused and not ever summoned the concerned person. It is stated despite the lapse of twelve years since the first transaction between M/s.PACL and hence there is no finding qua M/s.B&B and the ED says the matter is still under progress.

29. The learned senior counsel for the petitioner lastly referred to annexure P6 to rejoinder to say the direct recipients of M/s.PACL viz. M/s.Bridge and Building Construction Company Pvt. Ltd.; M/s.Mahaveer Infraengineering; M/s.Aravinda Infrastructure Pvt. Ltd.; Mr.Ankush P.Yadav; Mr.Amol Borkar; M/s.Synergyone; M/s.Greenfield Estates Partnership; M/s.Sunshine Developers; M/s.Ganraj Properties Pvt. Ltd.; 25 companies, the alleged associates of M/s.PACL; the managing directors, whole time directors, additional directors of M/s.PACL were not named as an accused and various accused granted bail till date.

30. I may here refer to an order dated 03.09.2020 of learned Trial Court in respect of other accused persons which is relevant:

"15. During the course of arguments on these bail applications as well as on other occasions, the complainant of this case admitted that investigation qua the money laundering involved in the present matter is still underway and it is also admitted that several months are required by the complainant to complete the investigation, particularly since the investigation relates to off shore aspects also. In such circumstances, no useful purpose would be served by keeping these accused in custody. When the custody of any of these accused was not even deemed necessary by the complainant during investigation into the present offence under PMLA, no useful purpose would be served by now taking them in custody in this case. Although on behalf of complainant it is claimed that there is possibility of tampering of evidence by the accused, if they are released on bail, but no plausible apprehension and no reasonable grounds have been put forth to nurture any such apprehension. This is particularly important since the complainant never arrested any of the accused in this case during investigation. The present ECIR No. ECIR/03/DLZO/2016 was registered on 26.07.2016, admittedly. The complaint was filed in September 2018. Throughout this period, arrest of accused persons was not deemed necessary or appropriate by the complainant. Therefore, now it does not lie in the mouth of the complainant to claim that if the accused are released on bail, they may tamper with the evidence. Evidence in the present matter is primarily documentary which is in possession of the complainant and therefore there is no reasonable apprehension of the accused tampering with the evidence. Similarly, the claim of complainant that custodial interrogation of the accused may be required falls flat as throughout the investigation period, their arrest was never deemed appropriate or necessary. They were not forwarded to the Court in custody at the time of filing of complaint. There is no reasonable apprehension of the accused persons fleeing from justice either."

31. Admittedly, except the present petitioner no other accused involved under the PMLA was ever arrested by ED or was granted bail vide order dated 03.09.2020. In Vijay Madanlal Choudhary and Others vs. Union of India and Others 2022 SCC OnLine SC 929, the Court rather held:

"387. xxxx The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money- laundering.

388. xxxxx The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the

Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.

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32. In Sanjay Pandey vs. Directorate of Enforcement 2022 SCC OnLine Del 4279 decided on 08.12.2022 the bail was granted on the principle of broad probabilities. Similarly, in Raman Bhuraria vs. Directorate of Enforcement in BAIL APPL.4330/2021 decided on 08.02.2023; Chitra Ramkrishna vs. Assistant Director, Enforcement Directorate, BAIL APPL.2919/2022 decided on 09.02.2023 and in Anil Vasantrao Deshmukh vs. State of Maharashtra 2022 SCC OnLine Bom 3150 bail(s) were granted.

33. Moreso, Ramchand Karunakaran, Managing Director vs. Directorate of Enforcement in CRL.A.1650/2022 decided on 23.09.2022; Dr.Bindu Rana vs. Serious Fraud Investigation Office in BAIL APPLN.3643/2022 decided on 20.01.2023, the bail was granted in PMLA and SFIO cases where co-accused with similar roles were not put to custody by the agency. In Sanjay Agarwal vs. Directorate of Enforcement in CRL.A1835/2022 decided on 21.10.2022, the appellant had undergone custody for about a year, was granted bail. Further In Jainam Rathod vs. State of Haryana and Another 2022 SCC OnLine SC 1506 and in Sanjay U Desai vs. Serious Fraud Investigation Office, 2022 SCC OnLine SC 1507, the Courts held equally it is necessary to protect the constitutional right of an expeditious trial in a situation where large number of accused implicated in a trial would necessarily delay the trial and the right to expeditious trial is protected under Article 21 of the Constitution.

34. Considering the submission of the petitioner, viz. the petitioner's claim he did not have knowledge if the funds of M/s.PACL were tainted in any manner on account of an order dated 28.11.2003 of Rajasthan High Court in PACL India Ltd. vs. Union of India as also an order dated 26.02.2013 in SEBI vs. PACL India Ltd. in CA 6753-54/2004 wherein, the Hon'ble Supreme Court refused to classify M/s.PACL as CIS but had only directed the SEBI on 22.08.2014 to look into its affairs and that there was no embargo for 18 years upon M/s.PACL on its operation. Admittedly the petitioner was a downstream investor of funds hence his submission he did not knowingly became a party to money laundering cannot be brushed aside lightly. Even otherwise he allegedly was a nominee non-executive director since 11.09.2012 in M/s.DDPL and M/s.Unicorn and prior to 11.09.2012 had nothing to do with these companies; further substantial amount received in the companies of petitioner was returned in the manner alleged above and even Gurmeet Singh's statement would show the petitioner represented the 25 companies were not associated with M/s.PACL. What weigh the statements under Section 50 of PMLA would carry at the end of trial

cannot be tested at the stage of bail, more importantly when the intermediary companies were never made an accused in the present ECIR. The ultimate effect of their non-inclusion would be seen at the conclusion of trial. Further considering the order dated 03.09.2020 wherein all remaining co-accused in this ECIR were admitted to bail, this Court has every reason to say the petitioner has passed the test of broad probabilities. Admittedly twin conditions of Section 45 (supra) does not put an absolute restraint on grant of bail or require a positive finding qua guilt.

35. Thus considering his period of custody of about 08 months and the broad probabilities discussed above; I admit the petitioner herein on bail on his executing a personal bond of Rs.25.00 lacs with one surety of like amount to the satisfaction of the learned Trial Court. The applicant shall surrender his passport before the learned Trial Court; the applicant shall not leave the country without permission of the learned Trial Court; shall ordinarily reside in his place of residence and immediately inform change of address if any to the Investigating Officer; the applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any reasonable time and shall ensure the number is kept active; the applicant shall cooperate in any further investigation, as and when required; the applicant shall not, directly or indirectly, contact or visit or offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case and; the applicants shall not tamper with evidence nor try to prejudice the proceedings in the matter in any manner.

36. In view of the above, the petition stands disposed of along with pending application(s), if any.

37. A copy of this order be communicated to the learned Trial Court/Jail Superintendent for information and compliance.

38. Order dasti.

YOGESH KHANNA, J.

FEBRUARY 23, 2023 DU