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Court No. - 14

Case :- Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 7661 of 2021

Applicant :- Pankaj Grover

Opposite Party :- Directorate Of Enforcement, Govt. of India, Lucknow

Counsel for Applicant :- Priyam Kumar Singh, Amit Shukla, Dhruv Rajpurohit, Kshitij Agnihotri, Neha Shukla

Counsel for Opposite Party :- A.S.G., Shiv P. Shukla

Hon'ble Chandra Dhari Singh, J.

1. The present application under Section 438 Cr.P.C. has been filed seeking anticipatory bail apprehending arrest in ECIR No.01/PMLA/LZO/2012 dated 14.04.2012 (Complaint No.115 of 2018), under Section 3/4 of Prevention of Money Laundering Act, 2002, Enforcement Agency E.D., District Lucknow.

2. Shri I. B. Singh, learned Senior Counsel assisted by Shri Amit Shukla, learned counsel appearing for the applicant has submitted that the applicant is the erstwhile sleeping Director of M/s Surgicoim Medequip Pvt. Ltd. (for short 'company'). The respondent lodged the instant Enforcement Case Information Report (for short 'ECIR') against all the persons named in F.I.R. No. RC-1(A)/2012-CBI/SC.II/ New Delhi Dated 02.01.2012. The applicant was never named in the predicate offence and no first information report was lodged against him. He has also submitted that the applicant was also not named in the ECIR and no role whatsoever has been assigned in the ECIR.

3. Shri Singh has submitted that the Hon'ble High Court vide order dated 15.11.2011 passed in W.P. No.3611/2011 (PIL), W.P. No.3301/2011 (PIL) and W.P. No.2647/2011 (PIL) directed the Central Bureau of Investigation (for short 'CBI') to conduct a

Preliminary Enquiry in the matter of execution and implementation of National Rural Health Mission (for short 'NRHM') and utilization of funds at various levels during such implementation in the entire State of Uttar Pradesh and also directed to register regular cases in respect of the persons against whom *prima facie* cognizable offence is made out in accordance with law.

4. It is submitted that in pursuance to the aforementioned orders of the Court, five separate preliminary enquiries were registered in different branches of CBI. Preliminary Enquiry No.5(A)/2011/SC.II/CBI/New Delhi was registered on 19.11.2011 in respect of alleged irregularities in the utilization of funds of Government of India. On 02.01.2012, a first information report being R.C. No.1(A)/2012-C.B.I./SC II/New Delhi was registered by CBI under Sections 120-B r/w Sections 420, 409 of IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act against several persons. Further, Directorate of Enforcement lodged Enforcement Case Information Report No.ECIR/01/PMLA/LZO/2012 dated 14.04.2012 against all the persons named in FIR No.RC-1(A)/2012-CBI/SC.II/New Delhi. Thereafter, Directorate of Enforcement passed order of Provisional Attachment dated 05.04.2017 and provisionally attached two of the properties.

5. It is further submitted that Directorate of Enforcement preferred Original Complaint on 11.05.2017 under Section 5(5) of the Prevention of Money Laundering Act, 2002 (for short "PMLA") being OC No. 773 of 2017 before learned Adjudicating Authority, PMLA, New Delhi seeking confirmation of the Provisional Attachment Order No. 03 of 2017 dated 05.04.2017 which vide judgment and order dated 13.09.2017 confirmed the order of Provisional Attachment. Thereafter, Directorate of Enforcement filed Complaint under Section 45 of PMLA against M/S Surgicojn Mediquip Pvt. Ltd., Naresh Grover, Pankaj Grover, Abhay Kumar Bajpai.

6. Shri Singh has submitted that Directorate of Enforcement misled the learned Special Judge, PMLA, Lucknow and only disclosed the confirmation of Attachment order by the Adjudicating Authority dated 13.09.2017. The complainant has chosen not to disclose before the Court the part setting aside of order dated 13.09.2017 passed by learned Appellate Authority, PMLA, New Delhi in Appeal No.FPA-PMLA-2058/LKW/2017 being preferred by Bajaj Finance Ltd. vide its judgment and order dated 28.06.2018.

7. It is submitted that learned Special Judge, PMLA, Lucknow vide its order dated 23.10.2018 on the basis of misrepresentation being made by the complainant took cognizance of Complaint No.115 of 2018 and passed summoning order against the applicant alongwith others. It is further submitted that learned Special Judge, PMLA issued bailable warrant which was served on the applicant and bonds were furnished by him. Thereafter, the applicant preferred an anticipatory bail application before the learned Special Judge, PMLA, Lucknow being Bail No.3812 of 2021, which was rejected/dismissed vide order dated 12.07.2021.

8. Shri Singh has submitted that accusations have been made only with ulterior motive and offence under Section 3 of PMLA cannot be made out against the applicant as none of the essentials of Section 3 has been met in the present case in respect of the applicant. It is submitted that Section 3 of PMLA mandates the existence of 'Proceeds of Crime', however, in the present case, there are no 'Proceeds of Crime'. Section 3 of PMLA is reproduced hereinbelow:

"3. Offence of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."

9. It is submitted that in the present case, the properties in question were acquired by the applicant in the year 2002 and 2001 and the alleged year of commission of crime is 2010-11. The properties in

question were never owned by the applicant nor the sale consideration of the properties was paid by the applicant. Hence, no question of proceeds of crime arises.

10. Shri Singh has submitted that custodial interrogation is not required in the present case as the investigation has already been completed and complaint has been filed.

11. It is further submitted that the present complaint has been filed by the respondent after the lapse of eight years since lodging of ECIR and upon conclusion of enquiry, which was duly supported by the applicant as and when directed, hence, the custody of the applicant in any event is not required. It is also submitted that the maximum punishment provided for alleged commission of offence under Section 3 of PMLA is from 3 to 7 years in terms of Section 4 of PMLA and the Hon'ble Supreme Court in a catena of judgments while citing Section 41 and 41A of Cr.P.C. has held that where the arrest is not required for the offences punishable upto 7 years, the arrest shall not be made.

12. It is submitted that pre-trial detention of the accused - applicant would serve no useful purpose since the accused - applicant has deep root in the society and there can be no apprehension of him absconding from justice or otherwise harassing or intimidating witnesses or hampering the trial.

13. In support of his argument, learned Senior Counsel has relied upon judgments of the Hon'ble Supreme Court in the case of *Gurbaksh Singh Sibbia vv. State of Punjab - AIR 1980 SC 1632 & Siddharam Satlingappa Mhetre v. State of Maharashtra - (2011) 1 SCC 694*, wherein it has been held that the Court dealing with a bail application should be satisfied that it is necessary to keep an accused behind bars for ensuring the presence during trial before refusing him bail and when this condition is absent, the right of the accused to liberty shall not be put on peril.

14. He has also relied upon another judgment of Hon'ble Supreme Court in the case of ***Jai Prakash Singh v. State of Bihar & Anr. - (2012) 4 SCC 379***, wherein it is held that "*parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the Court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.*"

15. Shri Singh has submitted that in view of the aforesaid ratio of the judgments, since the applicant does not have any previous criminal history and he is a respectable citizen, and there is no chance of his fleeing away from the justice, anticipatory bail may be granted to him.

16. *Per Contra*, Shri S.B. Pandey, learned Senior Advocate/Assistant Solicitor General of India assisted by Shri Shiv P. Shukla, Advocate appearing for respondent/Directorate of Enforcement has sought dismissal of the present anticipatory bail application and submitted that in terms of the twin conditions prescribed in Section 45 of PMLA, this Court could grant anticipatory bail to the applicant only after recording a satisfaction that there were reasonable grounds for believing that the applicant was not guilty of the alleged offence and that while on bail he was not likely to commit any offence. It is further submitted that though in ***Nikesh Tarachand Shah v. Union of India and Anr. - (2018) 11 SCC 1***, Section 45(1) of PMLA, as it then stood, had been declared unconstitutional by the Hon'ble Supreme Court but the defect pointed out by the Hon'ble Supreme Court, which formed the basis to declare Section 45(1) as unconstitutional, had been cured by the Legislature through its Act No.13 of 2018. As per Act No.13 of 2018 the offending expression "punishable for a term of an imprisonment of more than three years under Part A of the Schedule" has been substituted with "under this

Act”. In view of the aforesaid amendment the twin conditions prescribed under Section 45(1) of the PMLA stood revived. The amended Section 45(1) of the PMLA has not been challenged by the applicant and therefore, the applicant as also this Court is bound by the aforesaid twin conditions.

17. It is further submitted that in terms of the law laid down by the Hon'ble Supreme Court in the case of *Nagaland Senior Government Employees Welfare Association and others vs. State of Nagaland and others - (2010) 7 SCC 643*, a statute is deemed to be constitutionally valid till struck down by a competent Court. In the case of *Molar Mal (dead) through L.Rs. v. M/s. Kay Iron Works (Pvt.) Ltd., - (2000) 4 SCC 285*, the Hon'ble Supreme Court had held that where the constitutional validity of a provision was not under challenge such provision would bind the Court.

18. It is submitted that the observations of the Hon'ble Supreme Court in *Nikesh Tarachand Shah's case (supra)* that Section 45(1) of the PMLA would not apply to the grant of anticipatory bail were obiter as this was not the issue which the Hon'ble Supreme Court had been called upon to consider and decide. In any case the findings returned by the Hon'ble Supreme Court that Section 45(1) would not apply to anticipatory bails were *per incuriam* since Section 45(1) applied to bails which would also include anticipatory bails. In this regard he has placed reliance on the law laid down by the Hon'ble Supreme Court in *Dr. Shah Faesal and Ors. vs. Union of India and Anr. - (2020) 4 SCC 1*, *Sh. Balchand Jain vs. State of Madhya Pradesh - (1976) 4 SCC 572*, *Satpal Singh vs. State of Punjab - (2018) 13 SCC 813* and *Sushila Aggarwal and Ors. vs. State (NCT of Delhi) and Anr. - (2020) 5 SCC 1*.

19. Shri Pandey has submitted that a perusal of the voluminous oral and documentary evidence collected during the course of investigation has revealed that Naresh Grover, Director of M/s Surgicoim Medequip

Pvt. Ltd. in connivance with his son Pankaj Grover (present applicant) has been constantly trying to manipulate the records to conceal the "Proceeds of Crime" and has also clandestinely sold off half of the factory property after knowledge of initiation of present proceedings under the PMLA. The written directions given by Naresh Grover to his son Pankaj Grover, which were recovered during the search clearly establish that the said persons in possession or use of the property acquired out of/in lieu of "Proceeds of Crime" in the instant case were prone to encash/sell the same at the earliest opportunity to frustrate the proceedings under this Act and thus, the properties identified in their hands in lieu of "Proceeds of Crime" were attached by PAO No.3/2017 dated 05.04.2017. It is vehemently submitted that in the instant case, the investigation has established that Proceeds of Crime to the tune of Rs.21,20,87,617/- has been generated.

20. It is submitted that the investigation has further revealed that out of the said "Proceeds of Crime" a sum of nearly Rs.10 Crore has been paid by way of bribe/commission to various officials and ministers and their associates leaving the balance "Proceeds of Crime" of about Rs.11 Crore in the hands of M/s Surgicojn Medequip Pvt. Ltd. However, the said sum has been siphoned off by manipulating records and showing fictitious transactions to frustrate the proceedings under PMLA. Moreover, the allegation in respect of the balance remaining out of the "Proceeds of Crime" in the hand of M/s Surgicojn Medequip Pvt. Ltd. is also contained in two other ECIRs registered by the Department bearing ECIR No.06-07/PMLA/LKZO/2012 both dated 14.04.2012 is nearly Rs.8.65 Crore. Thus, the cumulative balance of the "Proceeds of Crime" in the hands of M/s Surgicojn Medequip Pvt. Ltd. is over Rs.19 Crore.

21. It is submitted that in the case of *P. Chidambaram v. Directorate of Enforcement - (2019) 9 SCC 24*, the Hon'ble Supreme Court has held that the power under Section 438 Cr.P.C. was an extraordinary power and the same was to be exercised sparingly. It is

also held that privilege of the pre-arrest bail should be granted only in exceptional cases.

22. It is submitted that the present applicant is involved in a serious offence and his custodial interrogation is essential to know as to whether other benefits have been received by him from NRHM scheme scandal or from any other influential person directly or indirectly, whether the applicant has diverted his ill-gotten money to anybody else. It is further submitted that economic offence constitute a class apart having serious social ramifications and there being *prima-facie* materials to show the applicant involvement in the economic offence with larger scale conspiracy, his application for anticipatory bail deserves to be rejected.

23. I have heard learned counsel for the parties and perused the records.

24. Learned Assistant Solicitor General for the respondent (Directorate of Enforcement) opposes the prayer for grant of anticipatory bail on the ground that the offence is grave in nature. He has also drawn my attention to the amended provisions of PMLA and submitted that the Hon'ble Supreme Court in the case of *Nikesh Tarachand Shah* (supra) struck down Section 45 of the PMLA, 2002, so far as it imposes further two conditions for release on bail, to be unconstitutional is concerned, he has submitted that now the Government has brought an amendment in the Finance Act, 2018, which has come into effect from 19.4.2018 to Section 45(1) of the PMLA, thereby inserting words 'under this Act' in Section 45(1) of PMLA. He has submitted that in view of the said amendment, the original Sub-section (ii) of Section 45(1) which imposes the said twin conditions automatically stands revived and the said condition therefore, remained in the statute book and hold the field even as of today for deciding the application for bail/anticipatory bail by an accused under PMLA and the judgment delivered by the Hon'ble

Supreme Court in the case of *Nikesh Tarachand Shah (supra)* has become ineffective and, therefore, the prayer for anticipatory bail of the applicant has to be considered in view of the amended provision of Section 45(1) of the PMLA.

25. The Hon'ble Supreme Court in the case of *Nikesh Tarachand Shah (supra)* has in unequivocal terms held in para 44 that 'we have struck down Section 45 of the Act as a whole'. It is further held by the Hon'ble Supreme Court in para 45 that, "we declare Section 45(1) of the PMLA in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India."

26. In the case of *Okram Ibobi Singh Vs. The Directorate Enforcement - 2020 SCC OnLine Mani 365*, the High Court of Manipur at Imphal has held that it can be easily deciphered, on comparative reading of Section 45 (1) of the PMLA, pre-amendment and post amendment, that Clause (ii) of sub- Section (1) remained as it stood before amendment. The issue which arises for consideration is as to whether the Hon'ble Supreme Court's decision in case of *Nikesh Tarachand Shah (supra)* can be said to have lost its significance because of the aforesaid amendment in Section 45(1) of the PMLA. The Court after considering submission of both sides and the law laid down in case of *Nikesh Tarachand Shah (supra)*, and also referring to several decisions has held that the Hon'ble Supreme Court has taken into consideration the illustrations while arriving at a conclusion that the twin conditions is unconstitutional. It was observed that the Hon'ble Supreme Court has clearly held that indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution of India. In the background, it is to be seen as to whether the amendment introduced in Section 45 of the PMLA shall amount to reframing the entire Section 45 and thereby reviving and resurrecting the requirement of twin-conditions under sub-Section (1) of Section 45 of the PMLA for grant of bail. In view

of clear language used in paragraph 46 of the Hon'ble Supreme Court's decision in case of *Nikesh Tarachand Shah (supra)*, the Court has no hesitation in reaching a definite conclusion that the amendment in sub-Section (1) of Section 45 of the PMLA introduced after the Hon'ble Supreme Court's decision in the case of *Nikesh Tarachand Shah (supra)* does not have the effect of reviving the twin-conditions for grant of bail, which have been declared ultra vires Articles 14 and 21 of the Constitution of India.

27. In the case of *Vinod Bhandari v. Assistant Director - 2018 SCC OnLine MP 1559*, the High Court of Madhya Pradesh has held that the original Section 45 has neither revived nor resurrected by the Amending Act and, therefore, as of today there is no rigor of said two further conditions under original Section 45(1)(ii) of PMLA for releasing the accused on bail under the said Act.

28. In view of the above, it can safely be concluded that the twin conditions as imposed by Section 45 of PMLA cannot be looked into while deciding the bail/anticipatory bail application as the same are violative of Articles 14 and 21 of Constitution of India. Thus, the contention advanced by Shri Pandey in respect of applicability of Section 45 cannot be accepted.

29. Learned Assistant Solicitor General for respondent to oppose the prayer of pre-arrest bail has laid much emphasis on the fact that since the applicant has been indicted in an economic offence and sufficient materials are there showing his indictment in the aforesaid serious offence, his custodial interrogation is needed to unearth the involvement of any other persons or the larger angle of conspiracy in commission of the offence alleged to have been committed by the applicant. In support of his contention he has placed reliance on a decision of the Hon'ble Supreme Court in the case of *P. Chidambaram (supra)*.

30. The importance and relevance of custodial interrogation of the accused in a case of the present nature and also that the Court should be loathed in grant of bail/pre-arrest bail in respect of persons indicted in economic offences has been elaborated by the Hon'ble Supreme Court in *P. Chidambaram's case (supra)* as follows:

“76. In Siddharam Satlingappa Mhetre v. State of Maharashtra (supra), the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to Siddharam Satlingappa Mhetre judgment and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar, the Supreme Court held as under : (SCC p.386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharashtra v. Modh. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal.)

Economic Offences:

78. Power under Section 438 Code of Criminal Procedure being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105, it was held that in economic offences, the Accused is not entitled to anticipatory bail.

79. The learned Solicitor General submitted that the “Scheduled offence” and “offence of money laundering” are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the Appellate is necessary.

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364, it was held as under:

5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in *Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439, the Supreme Court held as under:

34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the Accused, circumstances which are peculiar to the Accused, reasonable possibility of securing the presence of the Accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

82. Referring to *Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria*, (1998) 1 SCC 52, in *Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Boara*, (1999) 5 SCC 720, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the Respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail."

31. Responding to the aforesaid contention of Shri Pandey, learned Senior Counsel appearing for the applicant by placing reliance on several judgments of the Hon'ble Supreme Court has submitted that there is no restriction in Section 438 Cr.P.C. to entertain a prayer for anticipatory bail in respect of a person accused in economic offence. There is no such prohibition to entertain such prayer in respect of accused person indicted in economic offences in Section 438 of Cr.P.C., provided the offence committed is non-bailable one. It is only in respect of offences as enumerated under Section 438(4) of Cr.P.C.

and also in respect of offence under special statute wherein jurisdiction under Section 438 of Cr.P.C. has been specifically ousted, even if the offences are non-bailable, a person cannot invoke the jurisdiction under Section 438 of Cr.P.C. seeking pre-arrest bail. In the case of *Sushila Aggarwal* (supra) the Hon'ble Supreme Court in paragraphs-69, 70 and 71 have held as follows:—

“69. It is important to notice, here that there is nothing in the provisions of Section 438 which suggests that Parliament intended to restrict its operation, either as regards the time period, or in terms of the nature of the offences in respect of which, an applicant had to be denied bail, or which special considerations were to apply. In this context, it is relevant to recollect that the court would avoid imposing restrictions or conditions in a provision in the absence of an apparent or manifest absurdity, flowing from the plain and literal interpretation of the statute (Ref Chandra Mohan v. State of Uttar Pradesh). In Reserve Bank of India v. Peerless General Finance and (1967) 1 SCR 77 Investment Co. Ltd., the relevance of text and context was emphasized in the following terms:

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by section, Clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

70. Likewise, in Directorate of Enforcement v. Deepak Mahajan 40 this court referred to Maxwell on Interpretation of Statutes, Tenth Edn., to the effect that if the ordinary meaning and grammatical construction : (see PP.453-54, PARA 25)

“25.....leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words...”

71. *This court, long back, in State of Haryana v. Sampuran Singh. observed that by no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. The cardinal principle of construction of statute is that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is sufficient, therefore to notice that when Section 438 - in the form that exists today, (which is not substantially different from the text of what was introduced when Sibbia was decided, except the insertion of sub-section (4)) was enacted, Parliament was aware of the objective circumstances and prevailing facts, which impelled it to introduce that provision, without the kind of conditions that the state advocates to be intrinsically imposed in every order under it."*

32. So also, in the case of *Gurbaksh Singh Sibbia (supra)*, the Hon'ble Supreme Court has negated the proposition that the larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised, so also did not endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life as circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal. The Hon'ble Supreme Court has also not held that in case of a person accused of economic offence though non-bailable in nature, cannot invoke the jurisdiction of Section 438 of Cr.P.C. for his release on pre-arrest bail nor the aforesaid is the contention of the learned counsel for the applicant. The Hon'ble Supreme Court in different decisions, however, held that economic offences constitute a class apart, the Court need to visit the same with a different approach in the matter of bail/anticipatory bail and should be loath to extend the benefit of bail/pre-arrest bail to a person accused of such offences. The aforesaid is also the view of the Hon'ble Supreme Court in the case of *P. Chidambaram (supra)*.

33. Now, coming to the other contention of learned counsel for the respondent that since custodial interrogation is much more fruitful for collection of further evidence, and the interrogation of the applicant is required to unveil the larger conspiracy in the aforesaid heinous and serious offence in which crores of rupee has been collected by the company, of which money trail was found with the applicant, pre-arrest bail should not be granted to him.

34. In the case of *Gurbaksh Singh Sibbia (supra)*, the Hon'ble Supreme Court in paragraph-19 has held as under:—

“19. A great deal has been said by the High Court on the fifth proposition framed by it, according to which, inter alia, the power under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith.....”

35. In the case of *Gurbaksh Singh Sibbia (supra)*, in Paragraph - 15, it is held that:—

“15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a ‘Code for the grant of anticipatory bail’, which really is the business of the legislature, it can at best furnish broad guide-lines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail “if it thinks fit”. The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law.”

36. In the instant case, during the course of investigation under the PMLA, 2002, searches were conducted under Section 17 of PMLA, 2002 at the office, factory and residential premises of Naresh Grover, Director of M/s Surgicoim Medequip Pvt. Ltd. During these searches several incriminating documents were seized. These documents included letters written by Naresh Grover, who was in judicial custody at that time, to his son Pankaj Grover directing him to manipulate the accounts and records to defeat the allegation of supply of material under NRHM Scheme at astronomical rates of profit as well as of short supply of the said material. In the statements recorded under Section 50 of PMLA, 2002 both Pankaj Grover as well as Mr. Rajendra Kaul have admitted that the profit margin on procurement/manufacture of certain items ranged up to 200%. Moreover, the fact that Naresh Grover had directed Pankaj Grover in writing not to submit the original invoices and the ledgers of the sundry creditors and debtors to the ED as well as to manipulate the records of the genuine creditors with other fictitious entries establishes that he was wilfully and knowingly trying to frustrate the proceedings under the Act and was also attempting to deflect the process of investigation

37. A perusal of the voluminous oral and documentary evidence collected during the course of investigation has revealed that Naresh Grover, Director of M/s Surgicoim Medequip Pvt. Ltd. in connivance with his son Pankaj Grover (present applicant) has been constantly trying to manipulate the records to conceal the "Proceeds of Crime" and has also clandestinely sold off half of the factory property after knowledge of initiation of present proceedings under the PMLA. The written directions given by Naresh Grover to his son Pankaj Grover, which were recovered during the search clearly establish that the said persons in possession or use of the property acquired out of/in lieu of "Proceeds of Crime" in the instant case were prone to encash/sell the same at the earliest opportunity to frustrate the proceedings under

PMLA. It is vehemently submitted that in the instant case, the investigation has established that Proceeds of Crime to the tune of Rs.21,20,87,617/- has been generated.

38. Change in society has caused complete change in nature, cause, mode, rate and impact of crime on individual member of the society and society at large. Further, all and every stereotype of crime and criminals have completely changed and it is causing greater problem to criminal justice. Previously crimes were committed by un-socialised or mal-socialised or improperly socialised persons for whom all traditional criminologists have been of opinion that they belong to lower class, such criminals were committing crime in unorganised manner without proper planning or completely in un-planned manner by using crude *modus operandi* leaving clues on crime scene, traditional evidences were available particularly eye witnesses, crimes were committed to satisfy need and necessity or enmity or jealousy or lust. To deal such crimes simple and general measures of criminal justice was efficient. Simple investigating agency and its investigation procedure; traditional prosecution and prosecution measures were effective, traditional sentencing and its infliction was sufficient to tackle problem of traditional criminality. Crimes are now committed by influential persons belonging to upper class in organised manner after well planning by use of modern gadgets in course of performance of their official, professional, business activities in which they have expertise. Criminal acts committed by professionals, businessmen and public servants, it is very difficult to identify whether sober and civilised activity was committed or criminal act was committed. Such criminals have no criminal self image, further by societal members there is no labelling which affect seriously pursuits to cope with crime and criminality. Economic offenders are only concerned with their personal gain even at the cost of irreparable and serious loss to society which provided

socialization and made him a human being, provided status and position, provided respect and reputation, provided stature and means.

39. In *State of Gujarat v. Mohanlal Jitmalji Porwal - (1987) 2 SCC 364*, the Hon'ble Supreme Court observed:

“[...] the entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national; interest [...]”

40. To gain more and more profit, to become rich quick such criminal even has no problem to cause problem for the whole society, affect safety and security of life of societal members, misappropriation of public exchequer and ultimately affect completely wellbeing of society at large. In the way to accumulate money and to get physical commodities, life, property and well-being of common persons have no value. Criminal acts committed by such persons are creating a serious challenge before criminal justice system; It is difficult to identify whether crime was committed, when it is identified that crime was committed, it is difficult to find out clues and thereby evidences; when evidences are available, nature of evidences is completely different as not possible to be collected by simple investigating, presented by prosecution agency and ultimately to convict and sentence; when sentenced, simple sentence is not effective to deal with such modern criminals and their criminality. A criminal of such modern criminality are respected and influential persons with position, status, standing and means thereby they are always in situation to influence proceeding in investigation and prosecution, tamper with the evidences and pressurise witnesses.

41. Socio-economic criminals are economically sound and belong to elite class. Furthermore, they commit crime to get more and more money. They are in possession of large amount of proceed of crime. When a person has money earned by honesty and labour, they think again in spending the money but when money is obtained by corrupt means, such person may not have any problem spending. A criminal of economic offences has larger amount of proceed of crime, he may use it and affect the investigation and win over witnesses. In *Himanshu Chandradan Desai v. State of Gujrat - AIR 2006 SC 170* the appellant – accused was one of Directors of a Bank and together with other Directors and Managing Director of Bank siphoned off crores and crores rupees fund of the Bank by bogus loans and fictitious letters of credit in the name of their friends, relatives, associates and name-lender companies either without any securities or with wholly inadequate security. The Court of Session and the High Court rejected bail and then the appellant-accused moved the Hon'ble Supreme Court. The accused was remaining in custody for longer period since his surrender on 24.10.2002. The Hon'ble Supreme Court decided that having regard to huge amounts involved in the systematic fraud, there is danger of the appellants absconding, if released on bail, or attempting to tamper with the evidences by pressurizing witnesses. The Hon'ble Supreme Court refused to grant bail. In socioeconomic offences always the court considers monetary position of the accused and amount involved in criminal case. More the accused is economically sound and more the amount involved in criminal case; it cause more the chance of affecting the requirements of criminal justice, more the accused is unfit for bail, thereby, more the chance of refusal to grant bail.

42. In socio-economic offences proceed of crimes are larger and further, offenders are economically sound, therefore, in releasing them on bail/anticipatory bail probability of abscondance not within country but beyond country is more probable. Usually socio-economic

offenders abscond to some other country and after that it becomes difficult to bring them back and complete the criminal proceeding against them. Further, their monetary sound condition particularly proceed of crime obtained not by honest working but by deceiving others causes more prone situation for influencing witnesses and other evidences. Furthermore, status and position of offender provides opportunity to influence investigation and prosecution.

43. For the discussions made hereinabove and keeping in view the principles settled by the Hon'ble Supreme Court, this Court finds no merit in the application under Section 438 Cr.P.C. filed by the applicant. Consequently, the instant anticipatory bail application is *rejected*.

44. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial in any manner.

45. I may put on record an appreciation for my law clerk Mr. Keshav Dwivedi, who has assisted me in my research to enable me to decide the matter with promptness.

Order Date :- 26.08.2021

nishant/-

(Chandra Dhari Singh, J.)