

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (SB) 17 of 2024

With

CRAN 1 of 2024

Ayan Sil

v/s.

Enforcement Directorate Kolkata Zonal Office-II

For the Petitioner:	Ms. Misha Rohatgi Mohta, Adv, Mr. Bharat Monga, Adv. Ms. Shahina Haque, Adv, Mr. Moumita Kumar, Adv.
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For the Enforcement Directorate:	Mr. Phiroze Edulji, Adv., Ms. Anamika Pandey, Adv.
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Judgment delivered on:	02-12-2024
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SUVRA GHOSH, J. :-

- 1) The genesis of the case against the petitioner rests on registration of complaint by the Central Bureau of Investigation (hereinafter referred to as the CBI) on 9th June, 2022 under sections 120B/420/467/468/471/34 of the Indian Penal Code read with sections 7/7A/8 of The Prevention of Corruption Act pursuant to an order passed by a co-ordinate Bench of this Court on 8th June, 2022 in W.P.A. No. 9979 of 2022.

- 2) The present ECIR was registered on 24th June, 2022 following the CBI complaint and both the cases pertain to illegal appointment of candidates in TET-2014.
- 3) Seeking release of the petitioner on bail, learned counsel for the petitioner has canvassed the following argument:-
- 4) The petitioner is in custody since 20th March, 2023. He is not named in the FIR or the charge sheet of the predicate offence and was named only in the third complaint filed by the Enforcement Directorate (in short the E.D.). No predicate offence is made out against the petitioner and there is no evidence to suggest that he is involved in concealment of any proceeds of crime or laundering of money. In absence of a scheduled offence against the petitioner, the PMLA offence cannot survive and prolonged detention of the petitioner cannot be sustained.
- 5) Learned counsel draws the attention of the Court to the fact that after conclusion of argument on behalf of the petitioner on 10th September, 2024 the predicate offence agency sought issuance of production warrant against the petitioner and showed him as arrested in the predicate offence on 4th October, 2024.
- 6) Co-accused similarly circumstanced with the petitioner has been granted bail by this Court. The E.D. has filed at least five prosecution complaints and intends to rely upon evidence which includes 182 statements, 210 documents spanning over 20,000 pages and examine 167 witnesses to substantiate the charges against the twenty-five accused persons including the petitioner. Learned counsel submits that right to speedy trial and liberty is a fundamental right guaranteed under Article 21 of the

Constitution which mandates that an accused cannot be subject to indefinite incarceration pending trial, which shall amount to a punishment for him.

- 7) The E.D. appears to have been attempting to include unrelated allegations like TET-2012 and an alleged municipality scam within the purview of investigation of the present case which are beyond the scope of the predicate offence. Such approach, according to learned counsel, not only deviates from the main offence, but also raises serious questions about jurisdictional overreach, procedural fairness and adherence to statutory and constitutional principles. In fact, the documents relied upon by the E.D. in connection with the petitioner pertain to TET-2012 except one admit card of TET-2014. No reliance can be placed on the loose sheets recovered or the documents which do not reflect connection with TET-2014.
- 8) The Hon'ble Supreme Court has held that statement under section 50 of the PMLA cannot be a starting point for implicating any accused. The present case primarily rests on the confessional statement of the petitioner and statement of the co-accused under section 50 of the Act which are not legally sustainable. Also, these statements are not substantive pieces of evidence and their evidentiary value must be assessed during trial. The documents recovered from the petitioner's residence pertain to TET-2012 which is beyond the scope of investigation in the present case.
- 9) Even if it is held that huge unaccounted for money was found in the petitioner's bank accounts, the same cannot be termed as proceeds of

crime or tainted money. The petitioner's company M/s. ABS Infozone Private Limited was admittedly formed in 2013, i.e., much prior to the alleged offence. The other companies of the petitioner were procured in 2018 and 2020, i.e., much after the alleged offence. No link has been established connecting the petitioner to the predicate offence. The properties cited in the complaint were purchased by the petitioner in 2010, 2019, 2020 and 2021 and have no nexus with the alleged offence. The statement made by the petitioner in E.D. custody amounts to confessional statement under section 25 of the Indian Evidence Act and is inadmissible.

10) The onus to rebut the presumption laid down under section 24 of the PMLA shifts upon the petitioner only when the E.D. establishes three foundational facts:-

- (i) that a criminal activity relating to a scheduled offence has been committed;
- (ii) that the property in question has been directly or indirectly obtained as a result of such criminal activity; and
- (iii) that the person concerned is directly or indirectly involved in any process or activity connected with the said property which constitutes proceeds of crime.

The E.D. has failed to establish these foundational facts.

11) The E.D. has made out a new case that the candidates were given a nine digit roll number in TET-2012 and a fourteen digit roll number in TET-2014. The candidates who were unsuccessful in TET-2012 were allowed to reappear in TET-2014 with their earlier roll numbers of TET-2012. This

argument not being a part of the complaints, affidavit-in-opposition or written submission made by the E.D., cannot be considered at this stage. No mens rea of the petitioner being made out in the predicate offence, the petitioner is entitled to be released on bail.

12) Learned counsel for the petitioner has relied upon the following authorities in support of her contention:-

1. Prem Prakash v/s. Union of India through Directorate of Enforcement reported in 2024 INSC 637;
2. Kalvakuntla Kavitha v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 2269;
3. Neeraj Singal v/s. Directorate of Enforcement reported in 2018 Supreme Court Cases OnLine Del 10838;
4. Sanjay Pandey v/s. Directorate of Enforcement reported in 2022 Supreme Court Cases OnLine Del 4279;
5. V. Senthil Balaji v/s. Deputy Director, Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 2626;
6. Arvind Kejriwal v/s. Central Bureau of Investigation reported in 2024 Supreme Court Cases OnLine SC 2550;
7. Haricharan Kurmi v/s. State of Bihar reported in 1964 Supreme Court Cases OnLine SC 28;
8. Amit Aggarwal v/s. Enforcement of Directorate reported in (2024) 1 HCC (Del) 288;
9. Vijay Madanlal Choudhary v/s. Union of India reported in 2022 Supreme Court Cases OnLine SC 929;

10. Vijay Agrawal through Parokar v/s. Directorate of Enforcement in Bail Application 1762 of 2022;
11. Sanjay Kansal v/s. Assistant Director, Directorate of Enforcement.
12. Sanjay Jain v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine Del 1656;
13. Hemant Soren v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine Jhar 2041;
14. Rashmi Metaliks Ltd v/s. Directorate of Enforcement reported in 2022 Supreme Court Cases OnLine Cal 2316;
15. J. Sekar v/s. Enforcement Directorate reported in (2022)7 Supreme Court Cases 370;
16. Manish Sisodia v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine SC 1920;
17. Humayun Suleman Merchant v/s. Directorate of Enforcement and Another in SLP (Crl) No. 4321/2024;
18. Sunil Kumar Aggarwal v/s. Directorate of Enforcement in SLP (Crl) No. 5890 of 2024;
19. Sanjay Aggarwal v/s. Directorate of Enforcement reported in 2022 Supreme Court Cases OnLine SC 1748;
20. UOI v/s. K.A. Najeeb reported in 2021(3) Supreme Court Cases 713;
21. Ramkripal Meena v/s. Director of Enforcement in Special Leave to Appeal (Crl.) No (s). 3205/2024;
22. CBI v/s. V.C. Shukla reported in 1998 (3) Supreme Court Cases 410;

23. Arvind Kejriwal v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 1703;

- 13) Vehemently opposing the prayer, learned counsel for the E.D. has submitted that the modus operandi of the petitioner was to take huge money from the aspiring candidates in lieu of appointment which were never given. Five complaints were filed by the E.D. and the petitioner was named in the third supplementary complaint. Movable and immovable properties worth Rs. 11.96 crores belonging to the petitioner were attached. Interrogation of Kuntal Ghosh and Santanu Banerjee during E.D. custody reveals that the petitioner collected huge amount of money from candidates with the assurance of providing appointment to the post of teachers in TET-2012 and TET-2014 and made over the collected amount to Kuntal Ghosh and other agents for getting them appointed through Partha Chatterjee. One such candidate Tanay Kumar Dana stated in his statement recorded under section 50 of the PMLA that on his failure to qualify in TET-2012, he appeared in TET-2014 and gave a copy of his admit card and an amount of Rs. 4.5 lakhs to one Gunadhar Khanra who assured his appointment. The candidate visited the residence of Santanu Banerjee with Gunadhar Khanra with the cash which was handed over to Santanu Banerjee by Gunadhar Khanra. The candidate has neither been appointed nor his money refunded.
- 14) Various incriminating documents and digital evidence were recovered from the establishment of the petitioner which disclose his active involvement in illegal appointment of candidates. The petitioner was also involved in manipulating the OMR sheets in connivance with high

officials. Learned counsel has referred to the statement of the petitioner recorded under section 50 of the PMLA wherein he has explained how the candidates were charged with huge amounts upon assurance of jobs. The petitioner not only operated bank accounts in his own name but opened more than fifty accounts in the names of his family members. He invested the proceeds of crime worth rupees eighteen crores in his real estates projects dealt with by his company and also purchased properties like petrol pump, flat, land and hotel in the names of his son, wife and other family members/associates. Evidence collected by the E.D. suggests unholy nexus between Kuntal Ghosh, the petitioner and others involved in the crime.

15) Learned counsel has placed reliance upon the following authorities in support of his contention.

1. Maru Ram Etc. vs. Union of India & Anr reported in 1981 SCR (1)1196.
2. Karan Singh vs. State of Haryana & Anr reported in 2013 (12) SCC 529.
3. Satyendar Kumar Jain vs. Enforcement Directorate reported in 2024 SCC OnLine SC 317.
4. Partha Chatterjee vs. Enforcement Directorate [CRM (SB) 180 of 2023].
5. Kuntal Ghosh vs. C.B.I. [C.R.M (DB) 681 of 2024].
6. Manish Sisodia vs. C.B.I reported in 2023 SCC OnLine SC 1393.

7. Tarun Kumar vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1486.
8. Vijay Madanlal Choudhary vs. Union of India reported in 2022 SCC OnLine SC 929.
9. State of Gujarat vs. Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364.
10. Y.S Jagan Mohan Reddy vs. C.B.I reported in (2013) 7 SCC 439.
11. Nimmagadda Prasad vs. C.B.I reported in (2013) 7 SCC 466.
12. Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act) reported in (2015) 16 SCC 1.
13. State of Bihar vs. Amit Kumar reported in (2017) 13 SCC 751.
14. Anil Kumar Yadav vs. State (NCT of Delhi) reported in (2018) 12 SCC 129.
15. Tofan Singh vs. State of T.N. reported in (2021) 4 SCC 1.
16. Subires Bhattacharyya vs. C.B.I. reported in 2022 SCC OnLine Cal 4307.
17. Anubrata Mondal vs. C.B.I, reported in 2023 SCC OnLine Cal 23.
18. Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra reported in (2005) 5 SCC 294.
19. Union of India vs. Varinder Singh reported in (2018) 15 SCC 248.
20. Directorate of Enforcement vs. Aditya Tripathi reported in 2023 SCC OnLine SC 619.

21. Saumya Chaurasia vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1674.

22. Pavana Dibbur vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1586.

16) I have considered the rival contention of both the parties and material on record.

17) The Hon'ble Supreme Court, in the authority in Vijay Madanlal Choudhary (supra) has held as follows:-

“388. ... 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.” (emphasis supplied)

18) In the said judgment, dealing with section 24 of the PMLA, the Hon'ble Supreme Court has observed that only after the prosecution establishes at least three basic or foundational facts, the onus to rebut the presumption laid down under the said provision shifts on the accused. The foundational facts are laid down as hereunder:-

- (i) that a criminal activity relating to a scheduled offence has been committed;
- (ii) that the property in question has been derived or obtained, directly or indirectly, by any person as a result of such criminal activity; and
- (iii) that the person concerned is directly or indirectly involved in any process or activity connected with the said property which constitutes proceeds of crime.

19) On the same issue the Hon'ble Court, in Prem Prakash (supra) held that once these foundational facts are established by the prosecution, the onus shifts on the person facing charge of offence of money laundering to rebut the legal presumption that the proceeds of crime are not involved in money laundering, by production of evidence which is within his personal knowledge.

20) In the case in hand, huge assets and money have been recovered from the petitioner which according to the E.D. is tainted and can be termed as proceeds of crime. On the contrary, it is submitted on behalf of the petitioner that every unaccounted for or disproportionate property does not ipso facto lead to the inference that they are proceeds of crime. The link between the properties and the involvement of the accused in the crime is required to be proved.

21) The petitioner shall be granted an opportunity before the learned Trial Court to substantiate the same and also rebut the presumption under section 24 of the Act.

- 22) It is not in dispute that the petitioner was not initially named in the predicate offence and has been shown as arrested therein only after conclusion of argument on his behalf in the present case. The CBI owes an explanation as to why the petitioner was required in the earlier case after more than two years of registration of the case, when his bail petition is being considered by this Court.
- 23) The case essentially hinges on statements of the petitioner and the co-accused and recovery made pursuant to the same. The Hon'ble Court has held in a catena of judgments that statement of the co-accused cannot be considered against the petitioner and is not substantive piece of evidence. Its evidentiary value has to be tested at the time of trial and not at the stage of granting bail. The statement cannot be taken as gospel truth and only broad probabilities have to be seen. The Hon'ble Court has also held that prosecution cannot commence with the statement of a co-accused under section 50 of the PMLA.
- 24) It is pointed out that most of the documents recovered from the petitioner's house pertain to TET-2012. The E.D. appears to have held a comprehensive investigation with regard to TET-2012, TET-2014 and some municipal scam, though only investigation in respect of TET-2014 falls within the ambit of the present matter as well as the predicate offence connected thereto. I am again tempted to revert to the observation of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary* (supra) that in a given case, the protection of section 25 of The Evidence Act may have to be made available to the accused. Whether the protection given to the accused who is being prosecuted for the offence of money-laundering, of

section 25 of The Evidence Act is available or not, may have to be considered on a case to case basis being rule of evidence. In *Kashmira Singh v/s. State of Maharashtra* reported in (1952) SCR 526, the Hon'ble Court has held that *"... The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."*

25) Learned counsel for the E.D. has referred to relied upon documents to show that the roll numbers of TET-2012 consist of nine digits and that of TET-2014 twelve digits. Learned counsel has submitted that candidates who did not qualify in TET-2012 were permitted to appear for TET-2014 with the 2012 roll numbers and illegal gratification was paid by some of such candidates. These are factual aspects which need to be dealt with during trial.

26) In the judgment in *Manish Sisodia (supra)*, the Hon'ble Supreme Court has held that the right to bail in cases of delay coupled with incarceration for a long period should be read into section 439 of The Code of Criminal Procedure and section 45 of the 2002 Act. The Hon'ble Court has referred

to the authority in Javed Gulam Nabi Shaikh v/s. State of Maharashtra and another reported in 2024 Supreme Court Cases OnLine SC 1693 wherein the Hon'ble Court has dealt with the law laid down in the judgments in Gudikanti Narasimhulu and others v/s. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 Supreme Court Cases 240, Shri Gurbaksh Singh Sibbia and Others v/s. State of Punjab reported in (1980) 2 Supreme Court Cases 565, Hussainara Khatoon and Others (I) v/s. Home Secretary, State of Bihar reported in (1980) 1 Supreme Court Cases 81, Union of India v/s. K.A. Najeeb reported in (2021) 3 Supreme Court Cases 713 and Satender Kumar Antil v/s. Central Bureau of Investigation and Another reported in (2022) 10 Supreme Court Cases 51 and observed as follows:-

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.” The Hon'ble Court has also observed that the principle bail is a rule and refusal is an exception is, at times, followed in breach and it is high time that the trial Courts and the High Courts should recognize the principle that bail is rule and jail is exception.

27) Section 4 of the PMLA provides for rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also fine. The petitioner is in custody for little more than twenty

months. Though according to the E.D., investigation qua the petitioner is complete, charge is yet to be framed in respect of the twenty-five accused persons and there is no likelihood of trial commencing in near future.

28) The E.D. intends to rely upon voluminous evidence including 182 statements, 210 documents spanning over 20,000 pages and examine 167 witnesses to substantiate their case. The case is primarily based on documentary evidence which is in custody of the E.D. and there is no scope for the petitioner to tamper with the same. To address the apprehension of the petitioner influencing witnesses of the case, stringent conditions may be imposed upon him while releasing him on bail.

29) It is not in dispute that the petitioner is not at flight risk.

30) The Hon'ble Supreme Court has time and again held that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial and in such a case Article 21 applies irrespective of the seriousness of the crime. The right to life and personal liberty enshrined under Article 21 of the Constitution is overarching and sacrosanct. A constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused/under-trial under Article 21 of the Constitution has been infringed. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional Court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part.

- 31) The same view has been echoed in the authorities in Neeraj Singal (supra), Humayun Sulaiman Merchant (supra), Sunil Kumar Agrawal (supra), Sanjay Agarwal and Ramkripal Meena (supra).
- 32) Co-accused similarly circumstanced with the petitioner have been granted bail.
- 33) In the said backdrop, this Court is inclined to release the petitioner on bail subject to stringent conditions keeping in mind his right to speedy trial under Article 21 of the Constitution as well as his prolonged incarceration without trial.
- 34) Accordingly, the application for bail being C.R.M. (S.B) 17 of 2024 is allowed.
- 35) C.R.A.N. 1 of 2024 is also disposed of.
- 36) The petitioner be released on bail upon furnishing bond of Rs. 10,00,000/- (Rupees Ten lakhs) with adequate sureties, half of whom should be local, subject to the following conditions:-
- a. The petitioner shall surrender his passport with the learned trial Court at once.
 - b. He shall not leave the territorial jurisdiction of the learned trial Court without leave of the trial Court.
 - c. He shall appear before the learned trial Court on every date of hearing fixed before the learned Court.
 - d. He shall not tamper with evidence or intimidate witnesses in any manner whatsoever.
 - e. He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

- f. He shall provide his mobile number before the learned trial Court and shall not change the said number without prior intimation to the Court.

- 37) In the event the petitioner violates any of the bail conditions as stated above, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
- 38) It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall deal with the matter independently in accordance with law without being influenced by any observation which may have been made in this judgment.
- 39) All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
- 40) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)