

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

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.M. (SB) 84 of 2024

Kunal Gupta
v/s.

Enforcement Directorate

For the Petitioner:	Mr. Sabyasachi Banerjee, Sr. Adv., Mr. Antarikhya Basu, Adv., Ms. Minal Palana, Adv., Mr. Sayan Mukherjee, Adv.
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-For the Enforcement Directorate:	Mr. Phiroze Edulji, Adv., Mr. Arijit Chakraborty, Adv., Mr. Deepak Sharma, Adv., Ms. Swati Singh, Adv.
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Judgment delivered on:	06-12-2024
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SUVRA GHOSH, J. :-

1. The present complaint has its source in an earlier complaint registered as Electronic Complex Police Station Case no. 135 of 2022 dated 9th August, 2022 under sections 120B/419/420/468/471 of the Indian Penal Code and section 20/20A of the Indian Telegraph Act against the petitioner and others for alleged clandestine business of call centres being run at Godrej Waterside Building 1307, Tower-2, Kolkata- 700 091.
2. Seeking release of the petitioner on bail, learned counsel for the petitioner has submitted as follows:-
3. The petitioner was arrested on 26th August, 2023 in connection with Electronic Complex Police Station Case no. 135 of 2022 by the

jurisdictional police investigating the predicate offence and was released on bail on the same date by the learned Additional Chief Judicial Magistrate on the ground that the charge sheet did not disclose the name of the victim. The petitioner is also an accused in Biddhannagar Cyber Crime Police Station Case no. 77 of 2022 dated 11th May, 2022 under sections 419/420/468/471/120B of the Indian Penal Code and sections 20/20A of the Indian Telegraph Act. He was shown as arrested in the said case after being released on bail in Case no. 135/2022 and has been granted statutory bail on 23rd November, 2023 by the learned Additional Chief Judicial Magistrate, Biddhannagar. When the petitioner was in custody in connection with Case no. 77 of 2022, he was shown as arrested in connection with M.L. Case no. 13 of 2023 for offence under section 3 read with section 4 of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA) in connection with Case no. 77 of 2022. He was also shown as arrested in connection with M.L. case no. 17 of 2023 (the instant proceedings) in connection with Case no. 135 of 2022 on 7th January, 2024 and is in custody since then.

4. Admittedly by virtue of a leave and licence agreement executed between LGW Industries Limited and Met Technologies Private Limited (the petitioner's company) on 1st July, 2020, LGW Industries granted leave and licence in respect of the property in question to Met Technologies for a period of eleven months commencing from 1st July, 2020 to 31st May, 2021 which was further renewed for a period of eleven months from 1st November, 2021 to 30th September, 2022. Met Technologies, in turn, let out the premises on leave and licence to E-unite communication (OPC)

Private Limited (Rakesh Chowdhury's company) for a period of eleven months commencing from 1st July, 2020 to 31st June 2021 vide agreement dated 1st July, 2020 which was further renewed for another eleven months. The premises was given on sub lease to E-unite and the bank transactions which took place between E-unite and Met Technologies were towards payment of rent in terms of the agreement and therefore cannot be termed as proceeds of crime. The premises was however seized in connection with M.L. Case no. 13 of 2023 and not in M.L. 17 of 2023.

5. Though the Enforcement Directorate (in short the E.D.) has alleged that Rakesh Choudhury paid at least 1.50 crores in cash to the petitioner during the relevant period which can be termed as proceeds of crime, there is no evidence to substantiate such transaction. The said allegation has been made on the basis of statement of a co-accused Aditya Gupta recorded under section 50 of the PMLA which is not corroborated by any other evidence. The cash transaction allegedly surfaced from a purported excel sheet available in the laptop of Aditya Gupta who has not been shown as an accused or a witness in the present proceeding. The laptop along with excel sheet was seized by the CID in the first predicate offence where Aditya is shown as an accused. No seizure of cash has been shown in the present proceeding.
6. Charge sheet has been submitted in Case no. 135 of 2022 wherein the witnesses are official witnesses. No victim has been cited as a witness in a case under section 419/420 of the Indian Penal Code. Even in the prosecution complaint filed by the E.D., only official witnesses have been

cited. There is, in fact, no existence of any tangible legal evidence on which witness action can stand. The petitioner was in fact granted bail by the learned Additional Chief Judicial Magistrate, Bidhannagar in connection with the predicate offence on the ground of absence of victims in the charge sheet. It is also important to note that none of the persons whose statement was recorded under section 50 of the PMLA in course of investigation has been named as witness and the case is expected to proceed only on the anvil of the statement of the officers of the E.D. who have been cited as witnesses.

7. The sixteen accused named in the predicate offence have not been named in the present proceeding except Rakesh Choudhury.
8. The premises was leased out to the petitioner's company by LGW and the petitioner in turn leased out the same to E-unite, company of Rakesh Choudhury who runs call centres therein. The lease between LGW and the petitioner is not in question and LGW is neither an accused, nor a witness in the proceeding. Apart from rent transactions between E-unite and Met Technologies, the petitioner has no association with E-unite and their business activities. The co-accused persons who are alleged to be the employees of E-unite have been granted bail. The petitioner stands on a better footing. He has been shown as arrested on 7th January, 2024 and produced before the learned Court on 9th January, 2024 in violation of the settled principles of law. The concept of "shown arrest" is also unknown to law.
9. Two separate proceedings are registered against the petitioner and others on the self-same allegation of running fake call centres without any

explanation thereto. The examination of Aditya Gupta and Abhishek Prasad pertain to M.L. 13 of 2023 and have no existence in the present proceeding. The record of movable and immovable property allegedly seized from the residence of Rakesh Choudhury do not include the laptop or cash.

10. The allegations made in the prosecution report are wholly baseless and have no factual foundation to implicate the petitioner in any manner whatsoever. Subletting the premises by the petitioner to Rakesh Choudhury does not constitute any offence punishable under the Indian Penal Code or the PMLA. With regard to the other allegation of running fake call centres, the petitioner is already an accused in a separate proceeding being M.L. Case no. 13 of 2023.
11. Charge sheet has been submitted and the proceeding is based on documents which have been seized by the authority. Therefore the question of tampering with or destroying evidence does not arise.
12. Learned counsel for the petitioner has placed reliance on the following authorities in support of his contention.

- 1) Ramkripal Meena v/s. Director of Enforcement in Special Leave to Appeal (Crl.) No (s). 3205/2024;
- 2) Arvind Kejriwal v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 1703;
- 3) Prem Prakash v/s. Union of India in SLP(Crl.) No. 691 of 2023

- 4) Ram Kishore Arora v/s Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine SC 1682
- 5) Pankaj Bansal v/s. Union of India and Others reported in 2023 Supreme Court Cases OnLine SC 1244
- 6) Bacchu Yadav v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine SC 1130
- 7) Vijay Madanlal Choudhary v/s. Union of India reported in 2022 Supreme Court Cases OnLine SC 929;
- 8) P. Chidambaram v/s. Directorate of Enforcement reported in (2020) 13 Supreme Court Cases 791;
- 9) P. Chidambaram v/s. Central Bureau of Investigation reported in (2020) Supreme Court Cases 337;
- 10) Hemant Soren v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine Jhar 2042;
- 11) Vijay Agarwal v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 3176
- 12) Chandra Prakash Khandelwal v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 1094

- 13) Central Bureau of Investigation v/s. V.C. Shukla and Others reported in (1998) 3 Supreme Court Cases 410
- 14) Manish Sisodia v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine SC 1920;
- 15) Jalaluddin Khan v/s. Union of India reported in 2024 Supreme Court Cases OnLine SC 1945
- 16) Md. Hanif Mondal and Another v/s. State of West Bengal reported in 2018 Supreme Court Cases OnLine Cal 14646
- 17) V. Senthil Balaji v/s. Deputy Director, Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 2626
- 18) Javed Gulam Nabi Shaikh v/s. State of Maharashtra and Anr reported in 2024 Supreme Court Cases OnLine SC 1693
- 19) Rakesh Choudhury v/s. State of West Bengal reported in C.R.R 3321 of 2024
- 20) Prem Prakash v/s. Union of India through Director, Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 2270.

13. Vehemently opposing the prayer for bail, learned counsel for the E.D. has submitted as hereunder:-

14. The petitioner along with Rakesh Choudhury designed the racket of operating fake call centres introducing themselves as representatives of

several companies and cheated innocent people in the guise of offering different types of loans to them, the calls being made to people all over the globe. The call centres used to convince innocent people to pay a good amount for obtaining services which were never delivered. The call centres lacked authority to run Business Process Outsourcing (BPO) or toll-free Primary Rate Interface (PRI) and Call Line Identity (CLI) numbers which are mandatory for running BPO with in-bound calls. Details of the victims and amounts paid by them have been unearthed during investigation. Rakesh Choudhury shared a part of his illegal earnings, i.e., proceeds of crime with the petitioner in return for the infrastructural support provided by the latter. Several bank accounts demonstrate transfer of huge amounts of money from E-unite to Met. Rakesh Choudhury paid at least Rs. 1.50 crores in cash to Met and M/s. Fitser Web Services Private Limited under control of the petitioner at the relevant time.

15. The petitioner was found to be deeply involved in money laundering activities and M.L. Case no. 13 of 2023 is also pending against him. The purported sub-lease created between the petitioner and Rakesh Choudhury is nothing but a camouflage for flow of fund from one to the other. It appears that Met created sub-lease in favour of E-unite for the period 1st June, 2021 to 31st October, 2021 when the lease was not in existence. The agreement dated 24th September, 2021 between LGW and Met was executed on an invalid stamp paper issued on 9th July, 2018. The rent paid to LGW by Met was higher than the rent paid by E-unite during the period 10th July, 2020 to 31st May, 2021. The security deposit paid by Met was also found to be more than the amount received by Met

from E-unite. There are several discrepancies in the agreements relied upon by the petitioner which indicate that the petitioner and Rakesh Choudhury were engaged in money laundering in the garb of the sub-lease.

16. The petitioner is named in the predicate offence and is the prime accused in both the PMLA cases and is therefore a habitual offender. The transactions made by the petitioner are corroborated from the seized laptop of the petitioner as well as Aditya Gupta, an employee of the petitioner.
17. The petitioner has failed to rebut the presumption under section 24 of the PMLA or satisfy the twin conditions laid down under section 45 of the Act. It cannot be held at this stage that the petitioner is not guilty of the offence of money laundering. Though the petitioner is on bail in both the scheduled offences, that does not entitle him for bail in the present proceedings under the PMLA, given the stringent conditions for bail laid down in the Act. The petitioner's detention is crucial to prevent him from tampering with evidence or influencing witnesses. He is also at flight risk in view of his international connections and financial resources. In fact, he was outside the country during the initial period of investigation and was apprehended on his return to Kolkata via Nepal. The E.D. has prayed for rejection of bail.
18. In reply, learned counsel for the petitioner has submitted that investigation is over. The entire transaction between E-unite and Met is based on documents. Admittedly the premises was leased out by LGW in favour of Met and thereafter sub-leased to E-unite who is in occupation of

the premises. Since the lessor (LGW) is not aggrieved by alleged non-renewal of the lease, there cannot be any grievance of the E.D. in this regard. The master document which is the excel sheet was recovered from the possession of Aditya Gupta. Since he has been exonerated, no prima facie case lies against the petitioner. If the predicate offence is not proved, the present case shall also fail.

19. Learned counsel reiterates his prayer for bail.

20. I have considered the rival submission of the parties and material on record.

21. The twin conditions laid down under section 45 of the Act which are required to be satisfied by the petitioner for grant of bail are as follows:-

- i) The public prosecutor should be given an opportunity to oppose the application for release and ;
- ii) 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.

22. 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)

23. Section 24 of the Act of 2002 calls for a presumption that proceeds of crime in any proceeding relating thereto are involved in money laundering unless the contrary is proved by the person charged with the offence. Such presumption comes into play 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 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.

Therefore it is for the E.D. to establish these foundational facts after which the onus shall shift upon the petitioner to rebut the presumption under section 24.

24. The Hon'ble Supreme 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.

25. The petitioner was shown as arrested in connection with the present proceeding on 7th January, 2024 while he was in custody in connection with the other cases. He was produced before the learned Special Court on 9th January, 2024 i.e., beyond the statutory period of twenty-four hours as laid down under section 19(3) of the PMLA. It also appears that he was not produced before the learned Special Court on 7th January, 2024 when he was shown to be arrested. The Hon'ble Division Bench of this Court, in a judgment delivered on 13th September, 2018 in C.R.M. 7502 of 2018, has observed that the practice of showing a person as arrested in a fresh case while he is in custody in another case without producing him before the Court is not recognised in law. Unless the accused is produced before the Court either physically or through virtual mode, the concept of "showing arrest" may not be permissible. The petitioner therein was released on bail by the Hon'ble Division Bench on such ground.

26. The allegation against the petitioner primarily rests on the statement of the petitioner, the co-accused and others recorded under section 50 of the PMLA, the truth and veracity of which need to be weighed during trial.

27. In the authority in Prem Prakash (supra), the Hon'ble Supreme Court has held that when an accused is in custody under PMLA irrespective of the case for which he is under custody, any statement under section 50 PMLA

to the same investigating agency is inadmissible against the maker. The reason being that the person in custody pursuant to the proceeding investigated by the same investigating agency is not a person who can be considered as one operating with a free mind. It will be extremely unsafe to render such statements admissible against the maker.

28. In the present case, though the predicate offence and the present proceeding have been investigated by two different agencies, the vulnerable position in which the petitioner was placed when his statement was recorded while he was in custody cannot be ignored. Also, it is trite law that statement under section 50 of the PMLA cannot be treated as substantive piece of evidence and can at best lend corroboration to the material available against the accused in course of investigation.

29. Statement of the co-accused cannot be considered against the petitioner. Such statements cannot be taken as gospel truth and only broad probabilities have to be seen.

30. As observed by the Hon'ble Supreme Court in *Kashmira Singh v/s. State of Maharashtra* reported in (1952) SCR 526.

“... 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.”

31. It is not in dispute that the premises in question was leased out to the petitioner by LGW and the petitioner, in turn, sub-leased the same in favour of E-unite. The premises is occupied by E-unite as a sub-lessee under the petitioner. Certain discrepancies in the deeds executed between the petitioner's company (Met) and E-unite have been pointed out on behalf of the E.D. Whether such discrepancies are a camouflage by the petitioner and Rakesh Choudhury for securing the proceeds of crime shall be adjudicated at the appropriate stage of the proceeding by the learned trial Court.
32. The petitioner is on bail in connection with the predicate offence. Though the E.D. has submitted that details of victims from the USA, UK, Germany and Australia are available and subject to trial, none of the victims has been cited as a witness in the predicate offence. Out of the sixteen accused persons arraigned in the predicate offence, only Rakesh Choudhury and the petitioner have been shown as accused in the complaint under the PMLA, indicating thereby that the other perpetrators in the predicate offence are not involved in the money-laundering. The charge sheet of the scheduled offence does not name the victims who are undoubtedly the best persons to substantiate the allegations against the

petitioner. The relied upon documents described in the PMLA complaint were in fact seized in connection with M.L. 13 of 2024.

33. With regard to accumulation of huge money in the bank accounts of the petitioner and flow of money from the account of Rakesh Chowdhury to that of the petitioner, the petitioner claims that the said bank transactions are towards rent and security deposit pursuant to the leave and licence agreement between them. It is for the petitioner to substantiate his claim during trial.

34. In the words of the Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra), *"the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence..... Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution."*

35. The primary allegation in the proceeding is against Rakesh Choudhury who is alleged to have been operating fake call centres in the premises in question and to have transferred proceeds of crime to the account of the

petitioner. The payment of Rs. 1.50 crores to the petitioner in cash has prima facie not been substantiated. The said cash transaction surfaced from a purported excel sheet available in the laptop of Aditya Gupta who is neither an accused, nor a witness in the present proceeding. A comprehensive investigation appears to have been done by the E.D. resulting in overlapping of statements, documents, etc., in both the PMLA cases.

36. The E.D. apprehends flight risk of the petitioner and tampering of evidence as well as influencing witnesses by him if enlarged on bail. The case depends on documentary evidence which is in custody of the E.D. There is no scope for the petitioner to tamper with the same. The witnesses cited are official witnesses who are employees of the department and it is expected that the petitioner is not in a position to influence them. The issue of the petitioner being at flight risk can be addressed by imposing stringent conditions upon the petitioner while granting him bail. Investigation has culminated in submission of charge sheet. Further detention of the petitioner is not required for the purpose of custodial interrogation.

37. 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.

38. Upon consideration of the facts and circumstances of the case, material on record as well as law on the point, this Court is inclined to release the petitioner on bail subject to stringent conditions.

39. Accordingly, the application for bail being C.R.M. (S.B) 84 of 2024 is allowed.

40. 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.

41. 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.

42. 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.

43. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

44. 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)