Directorate of Enforcement v. Raj Singh Gehlot

ECIR/14/HQ-STF/2019 dated 18.10.2019

29.07.2021

Present: Sh. Amit Mahajan and Sh. N. K. Matta, Ld. Spl. PP for ED through VC.

Sh. Bhoopesh, AD, PMLA/IO present through VC.

Accused Raj Singh Gehlot produced after arrest through VC.

Sh. Vikas Pahwa, Ld. Senior Advocate with Sh. Tanvir Ahmed Mir, Sh. Vikas Arora, Sh. Sumer S. Boparai, Ms. Raavi Sharma and Sh. Kartik Sabharwal, Ld. counsel for accused Raj Singh Gehlot are present through VC.

Proceedings done through video conferencing.

It is certified that link was working properly and no grievance was agitated by either of the counsel in this regard.

1. Present is an application moved on behalf of the IO seeking ED custody remand of accused Raj Singh Gehlot for a period of 14 days. It is submitted by Ld. SPP that a loan was sanctioned to M/s AHPL by a consortium of banks led by J&K Bank, Ansal Plaza, Delhi for construction of a hotel. The accused in connivance with bank officials defalcated the money and siphoned it off through a complex web of shell companies and his associates. It is further submitted that accused Raj Singh Gehlot entered into a criminal conspiracy with other accused persons to fraudulently siphon off the loan amount by diverting the funds for other purposes such as to settle the loan of other group companies and making Fixed Deposit as well as diversion of materials to other projects of the Ambience Group. It is submitted that money so siphoned off by him as a result of criminal conspiracy qualifies as ‘proceeds of crime’ and accused directly indulged in the activity connected to proceeds of crime including its concealment, possession, acquisition and use and thereby he is

liable for offence punishable u/s 3 of PMLA. It is submitted that no complaint has been lodged by the concerned bank as the bank officials themselves were involved in this criminal conspiracy with the accused.

2. It is further submitted that investigation in the instant matter is at crucial juncture and accused needs to be interrogated with respect to diversion of funds, utilization of funds, confrontation with material collected so far and statements recorded during investigation; his custodial interrogation is also required to unearth the other beneficiaries and he also needs to be confronted with the data extracted from digital devices recovered from his possession. It is submitted that accused is misleading the investigation by giving evasive replies to the investigating agency and is non-cooperative during investigation. It is thus prayed that accused Raj Singh Gehlot be remanded to ED custody for a period of 14 days.

3. Ld. Senior Advocate for accused submitted that accused was never arrested by J&K police in the predicate offence. It is submitted that scope of investigation, as revealed from the remand application, goes much beyond the scope of scheduled offences. It is argued by Ld. defence counsel that no offence of money laundering is made out in the instant case as not only the hotel has been duly constructed by the accused out of the impugned loan amount but each and every penny spent by the accused can be duly explained by him. It is further submitted that two forensic auditor's reports supports the case of the accused. It is further submitted that as there is no 'proceeds of crime' in the instant matter, therefore, no offence of money laundering is made out in the instant matter.

4. It is submitted by Ld. defence counsel that in the instant case, no complaint has been lodged by the banks as the banks were not aggrieved and the accused was sincere in his approach to repay the outstanding loan amount. It is submitted that in all fairness accused

entered into the negotiations for one time settlement with the bank officials.

5. It is further submitted by Ld. defence counsel that the grounds of arrest are absolutely flimsy and superfluous and no case is made out against accused. It is submitted that accused has been interrogated by the concerned investigating agency on multiple occasions and he has been thoroughly cooperative with the investigating agency but the investigating agency is maliciously and mischievously attempting to mislead the court by alleging that accused is evasive and non-cooperative.
6. It is forcefully argued by Ld. defence counsel that PC remand can only be permitted for strong and compelling reasons which are evidently missing in the case at hand. It is submitted that the Court is duty bound to protect the interest of the accused and to ensure that the custodial interrogation is not a charade for custodial torture. It is thus prayed that the instant application is liable to be rejected.
7. In support of his submissions, Ld. defence counsel has placed reliance upon Delhi High Court Rules (Rule 3, 4,5 and 8 of Part-B) and also upon the judgments in the matter of *Harshad Mehta v. CBI 1992 (24) DRJ 392, Santosh v. State of Maharashtra 2017 (9) SCC 714, Arnesh Kumar v. State of Bihar 2014 (8) SCC 273* and *Manubhai Ratilal Patel v. State of Gujarat 2013 (1) SCC 314*.
8. I have heard and considered the rival submissions made by Ld. SPP for ED and Ld. Senior Advocate for accused Raj Singh Gehlot and also carefully gone through the material available on record.
9. In the instant matter, the allegations are serious in nature. In case FIR No. 15/2019 registered at P.S Srinagar ACB dated 24.07.2019, during the investigation carried out by ACB, it was revealed that accused in connivance with the bank officials got the loan account declared as ‘NPA’ with a criminal intent to facilitate the

embezzlement of the funds by entering into one time settlement with the bank to the firm's advantage.

10. Statements recorded by the IO during the course of investigation reflects that the payments were made by accused Raj Singh Gehlot for services never rendered and material never supplied. The material available on record not only suggests the siphoning off the funds, fraudulently obtained by the accused in connivance with the bank officials, but also alludes to its placement, layering and integration. The IO has brought to my notice a statement recorded u/s 50 of PMLA of a Bank Manager (J&K Bank)wherein it is evident that the amount was released to the accused in deviation of rules. Further, against the outstanding liability of **Rs.289.28 crores**, the bank officials attempted to settle the account with accused for a paltry sum of Rs.**128.94 crores** which speaks volumes about the malafide intent. The material available on record suggests that accused entered into a criminal conspiracy with other accused persons to fraudulently siphon off the loan amount by diverting the funds for the purposes other than for what it was released. The money so siphoned off by him, as a result of criminal conspiracy qualifies it as '*proceeds of crime*'.

11. Concept of locus standi is alien to criminal law. I concur with the Ld. SPP that the bank officials being involved and arraigned as co-accused with the present accused in predicate offence, for obvious reasons, would not come forward to lodge a complaint and thus no fault could be found with the ED for initiation of investigation in the instant matter.

12. It is forcefully argued by Ld. defence counsel that the accused has been interrogated extensively by the Directorate of Enforcement and no recoveries are to be effected at the instance of the accused. It is further submitted that even raids have also been conducted at the

house/office of the accused. It is submitted that there is absolutely no plausible ground for extending the ED remand of the accused.

On the contrary, Ld. SPP has forcefully argued that digital data collected so far is yet to be analysed and accused is required to be further confronted with the same and also with statement of other witnesses and accused persons; accused is non-cooperative and giving evasive replies and for this reason, the investigation is still under progress and the stand of accused on certain crucial aspects is contrary to the records of the case.

Ld. Counsel for the accused , in rebuttal, seriously disputes the contention and forcefully argues that the accused is fully cooperative.

In my considered opinion, a sustained custodial interrogation of the accused is desirable owing to the very intricate nature of the offence of money laundering. It has been observed by the Hon'ble Apex Court in the matter of **P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24** that :

> " 82. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, **it requires systematic and analysed investigation which would be of great advantage.**
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> In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the department. Having regard to the nature of allegations and the stage of the investigation, **in our view, the investigating agency has to be given sufficient freedom in the process of investigation "**

It has also been observed by Hon'ble Apex Court in P. Chidambaram (supra) that :-

" 58. Contention of the appellant that the court will have to scrutinise the questions put to the accused during interrogation and answers given by the appellant and satisfy itself whether the answers were “evasive or not”, would amount to conducting “mini trial” and substituting court’s view over the view of the investigating agency about the “cooperation” or “evasiveness” of the accused and thereafter, the court to decide the questions of grant of anticipatory bail. This contention is far-fetched and does not merit acceptance.

59. As rightly submitted by learned Solicitor General that if the accused are to be confronted with the materials which were collected by the prosecution/Enforcement Directorate with huge efforts, it would lead to devastating consequences and would defeat the very purpose of the investigation into crimes, in particular, white collar offences. If the contention of the appellant is to be accepted, the investigating agency will have to question each and every accused such materials collected during investigation and in this process, the investigating agency would be exposing the evidence collected by them with huge efforts using their men and resources and this would give a chance to the accused to tamper with the evidence and to destroy the money trail apart from paving the way for the accused to influence the witnesses. If the contention of the appellant is to be accepted that the accused will have to be questioned with the materials and the investigating agency has to satisfy the court that the accused was “evasive” during interrogation, the court will have to undertake a “mini trial” of scrutinizing the matter at intermediary stages of investigation like interrogation of the accused and the answers elicited from the accused and to find out whether the answers given by the accused are ‘evasive’ or whether they are ‘satisfactory’ or not. This could have never been the intention of the legislature either under PMLA or any other statute.

60. **Interrogation of the accused and the answers elicited from the accused and the opinion whether the answers given by the accused are “satisfactory” or “evasive”, is purely within the domain of the investigating agency and the court cannot substitute its views by conducting mini trial at various stages of the investigation.**

61.**The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds**..”

13. Investigation in the instant matter is at crucial juncture. In a case titled **CBI Vs. Anil Sharma, (1997)7 SCC 187**, it was observed by Hon'ble Apex Court that :

> "…We find force in the submission of the CBI **that custodial interrogation is qualitatively more elicitation oriented** than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. **The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders**…"

14. So far as the contention made on behalf of the accused regarding his arrest on invalid grounds is concerned, it has been observed by Hon'ble Apex Court in the matter of Adri Dharan Das vs State of West Bengal in Appeal (crl.) 326 of 2005 decided on 21.02.2005 here as under:-

> "…Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his dis- appearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation..."

Thus I do not find any merit in the contention that the arrest of the accused was unwarranted in the instant case. Further, the decision of a separate investigating agency investigating the predicate offence cannot be an impediment upon the powers of arrest of the IO in the instant case. Even the scope of the investigation in the instant matter is not circumscribed by the investigation carried out by Srinagar police.

15. Considering the totality of circumstances, I am of the considered opinion that ED has set out a case for custodial interrogation of accused Raj Singh Gehlot. In view of the same, accused Raj Singh Gehlot is remanded to ED custody till **05.08.2021**.
16. Medical examination of accused be conducted before and after the ED remand.
17. Application is disposed off accordingly.
18. Copy of the order be given dasti to all the concerned.

DHARMENDER RANA Digitally signed by DHARMENDER RANA
Date: 2021.07.29 21:29:38 +05'30'

(Dharmender Rana)

ASJ-02/NDD/PHC/ND

29.07.2021