

Court No. - 10

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13642 of 2022

Applicant :- Sidhique Kappan

Opposite Party :- Directorate Of Enforcement Thru. Assistant Director Lucknow

Counsel for Applicant :- Ishan Baghel, Mohd. Khalid

Counsel for Opposite Party :- Kuldeep Srivastava

Hon'ble Dinesh Kumar Singh, J.

1. Heard Mr. Ishan Baghel, learned counsel for the accused-applicant, as well as Mr. Kuldeep Srivastava, learned counsel for the Enforcement Directorate (hereinafter referred to as the "ED"), and gone through the entire record.

2. By means of this application under Section 45 of the Prevention of Money Laundering Act, 2002 (herein referred to as "PMLA") read with section 439 CrPC, the accused-applicant seeks bail in Session Case No.1004 of 2021 (ED Vs. K.A. Rauf and others), arising out of ED Case No. ECIR/02/HIU/2018, under Section 3/4 of the PMLA lodged at Police Station Enforcement Directorate, District Lucknow.

3. The accused-applicant is a press reporter duly accredited by the Press Council of India; he had been working for AZHIMUKHAM.COM since January, 2020; he was travelling to Hathras (U.P.) to cover up an incident which had received wide coverage in print and electronic media. It appears that the accused-applicant was travelling to Hathras on direction given by Mr. Sasidharan, Manager of the said news portal AZHIMUKHAM.COM; he was arrested by the U.P. Police on 05.10.2020 in connection with Crime No.0199 of 2020 registered at Police Station Maant, District Mathura in respect of offences under Sections 153-A, 295-A and 124 IPC, Sections 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 and Sections 65, 72 and 76 of the Information Technology Act, 2000.

4. The accused-applicant had been granted bail by the Supreme Court vide judgment and order dated 09.09.2022. However, before the

accused-applicant could have come out of jail pursuant to the said judgment and order passed by the Supreme Court, admitting him on bail, a complaint under Section 3/4 read with Sections 44 and 45 of the PMLA came to be filed on which cognizance was taken on 10.02.2022.

5. In the complaint, it is alleged that the accused-applicant and co-accused are members of 'Popular Front of India' (hereinafter referred to as 'PFI'). It is further alleged that the accused-applicant is a part of larger conspiracy hatched by K.A. Rauf Sherif, Secretary of PFI to visit Hathras with an intention to disturb communal harmony, instigating riots and spreading terror and to fund anti-CAA protest and for other unlawful activities of PFI. It is further said that to give effect to the said criminal conspiracy, the money was collected from abroad through bogus and manufactured transactions, and the same were transferred in the account of co-accused.

6. The investigation conducted revealed that K.A. Rauf Sherif entered criminal conspiracy with Noufal Sherif, Muhammed, Shafeeque Payeth and other associates, who are settled abroad to fraudulently transfer money from abroad relating to international trade of goods. The money so obtained by K.A. Rauf Sherif as a result of criminal activities relating to the offence of criminal conspiracy qualified as proceeds of crime. The part of the proceeds of crime so acquired and possessed by K.A. Rauf Sherif and his associates, who are settled abroad, was for the purpose of purchasing land and in this manner a part of the amount was deposited in his account to enable him for its future use. The proceeds of crime generated through the offence of criminal conspiracy under Section 120-B IPC, which is scheduled offence under PMLA, was used by K.A. Rauf Sherif and his associates, namely, Atikur Rahman, Masud Ahmed, Sidhique Kappan (present accused-applicant) and Mohd. Alam to commit offences under Sections 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 which have been invoked in the in FIR No.0199 of 2020 dated 07.10.2020, which are also scheduled offences under the PMLA. The

money trail involved would disclose that K.A. Rauf Sherif had received total Rs. 1,36,14,291/- from fraudulent transactions.

7. The role which has been assigned to the present accused-applicant is in respect of hatching a criminal conspiracy with K.A. Rauf Sherif. It is alleged that the present accused-applicant was having relation with the PFI for which he had worked and he was also in regular touch of office bearers of the PFI. It is further alleged that the accused-applicant was a part of the criminal conspiracy hatched by K.A. Rauf Sherif with other co-accused in disturbing communal harmony, instating riots and spreading terror. In this manner, he was directly involved in use of proceeds of crime by travelling in vehicle to visit Hathras along with other co-accused and for this purpose funds were transferred in the account of co-accused, Atikur Rahman from the bank account of Mr. Ahammed Shibili P K on instructions of K.A. Rauf Sherif. The complaint would disclose that only Rs.5,000/- was transferred in the bank account of Atikur Rahman, who was accompanying the accused-applicant, and except for Rs.5,000/-, no other transaction has been shown in the account of the accused-applicant or Atikur Rahman.

8. Learned counsel for the accused-applicant submits that except for bald allegation that the accused-applicant has dealt with a part of the proceeds of crime or he used the proceeds of crime pursuant to criminal conspiracy hatched by K.A. Rauf Sherif, there is nothing, which has been mentioned in the detailed complaint that how much money was used by the accused-applicant or any other money was transferred except for Rs.5,000/-, which was transferred in the bank account of Atikur Rahman. The learned counsel further submits that mere association of the accused-applicant with PFI, even if it is believed to be true, would not make out an offence under the PMLA. Even if contents of the complaint are believed to be true, no offence under Section 3 of the PMLA is made out against the accused-applicant. It is further submitted that twin conditions, as prescribed under Section 45 PMLA, are not even otherwise attracted in the present case inasmuch as the proceeds of crime which has been dealt

with allegedly by the accused-applicant is only Rs. 5,000/-, whereas to attract twin conditions of Section 45 PMLA, proceeds of crime should be Rs. 1 Crore or more.

9. On the other hand, learned counsel for the respondent - ED, submits that the proceeds of crime are more than Rs. 1 Crore, as mentioned in the complaint; the accused-applicant is a part of the gang of which K.A. Rauf Sherif is the General Secretary; the entire money received, which is proceeds of crime, has been utilized by K.A. Rauf Sherif and the present accused-applicant and others for commission of the scheduled offences and, therefore, twin conditions are not satisfied, as mentioned under Section 45 of the PMLA to enlarge the accused-applicant on bail under the PMLA.

10. I have considered the submissions advanced by the leaned counsels for the accused-applicant and the ED.

11. Except for allegations that Rs. 5,000/- was transferred in the bank account of co-accused, Atikur Rahman, there is no other transaction, either in the bank account of the accused-applicant or in the bank account of co-accused. Even if it is believed that part of proceeds of crime was transferred in the bank account of co-accused, Atikur Rahman that itself may not be sufficient to prove that the accused-applicant has dealt with the proceeds of crime amounting to Rs. 1,36,14,291/-which had been allegedly received by K.A. Rauf Sherif.

12. Considering the aforesaid facts, coupled with the contention on behalf of the accused-applicant that in the present case the twin conditions, as mentioned under Section 45 of the PMLA, are not attracted inasmuch as the proceeds of crime is less than Rs.1 Crore and there is no likelihood of the accused-applicant to commit the same offence in future, and the fact the accused-applicant has already been in prison in predicate offences from 05.10.2020 till he was enlarged on bail by the Supreme Court, and thereafter he is in custody of the ED, I am of the view that the accused-applicant is entitled to be released on bail.

13. The application is, thus, **allowed**.

14. Let applicant- **Sidhique Kappan**, accused of above-mentioned FIR/crime number, be released on bail on **his** furnishing a personal bond and two local and reliable sureties each in the like amount to the satisfaction of the Court/Magistrate concerned with the following conditions, which are imposed in the interest of justice:-

*(i) the applicant(s) shall file an undertaking to the effect that **he** shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;*

*(ii). the applicant(s) shall remain present before the trial court on each date fixed, either personally or through **his** counsel. In case of **his** absence, without sufficient cause, the trial court may proceed against **him** under Section 229-A of the Indian Penal Code;*

*(iii). in case, the applicant(s) misuse(s) the liberty of bail and in order to secure **his** presence proclamation under Section 82 Cr.P.C. is issued and the applicant(s) fail(s) to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against **him** in accordance with law, under Section 174-A of the Indian Penal Code; and*

*(iv) the applicant(s) shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of **his** bail and proceed against **him** in accordance with law.*

15. Any observation on merit in this order is only confined for decision on the present bail application, and shall not influence ongoing adjudication proceedings under the PMLA against the accused-applicant

[D.K. SINGH, JJ]

Order Date :- 23.12.2022

MVS/-