

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : **01.10.2021**
% Pronounced on : **26.10.2021**

+ **BAIL APPLN. 3619/2021 and CRL.M.A. 15810/2021**

ANKIT AGARWALPetitioner

Through: Mr. Siddharth Aggarwal, Sr.
Advocate with Mr. Vaibhav
Sethi, Mr. Anushasit Arya, Mr.
Sumit Rana, Mr. Abhinav
Sekri and Mr. Harsh Yadav,
Advocates.

Versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Mr.Zoheb Hossain, Adv.
(Special Counsel for ED).

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

CRL.M.A.No. 15810/2021

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 3619/2021

1. The present bail application has been filed by the petitioner under Section 438 read with Section 482 Cr.P.C. seeking anticipatory bail in case

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bearing ECIR No. DLZO-I/43/2021, Under Section 3 R/w Section 4 of the Prevention of Money Laundering Act, 2002 in CC No. 17/21 titled as “Directorate of Enforcement Vs. Amrendra Dhari Singh & Others.

2. Briefly stated, the facts of the case are that a charge-sheet in the form of complaint was filed by the ED wherein it was alleged that a CBI case was registered vide RC 221/2021/E/0009 on 17.05.2021 U/s 120B, 420 IPC and Sec. 13(1)(d) r/w Sec. 13(2) of the Prevention of Corruption Act, 1988 (**hereinafter referred to as PC Act**) against accused Amarendra Dhari Singh and other accused persons.

3. Accused Amarendra Dhari Singh was a Senior Vice President of M/s Jyoti Trading Corporation, at the relevant time. The accused persons named in the CBI case entered into a criminal conspiracy during 2007 to 2014 and cheated and defrauded IFFCO and Indian Potash Limited. (IPL), the share holders of those entities and the Government of India by fraudulently importing fertilizers and other materials for fertilizer production at inflated prices and claimed higher subsidy from Government of India causing loss of several crores of rupees. They allegedly siphoned off the commission received from the suppliers through a complex web of fake commercial transactions through multiple companies owned by the accused persons, registered outside India in order to camouflage the fraudulent transactions.

4. It is claimed that IFFCO set up its 100% subsidiary namely M/s Kisan International Trading FZE in Dubai for importing fertilizers and other raw materials from foreign companies. Bills were raised by the suppliers in favour of M/s Kisan International Trading at inflated rates to cover up the bribe money to be paid to the accused persons and similar modus was adopted in respect of other manufacturers/suppliers. Money was paid through hawala operators and intermediaries. Group companies of co- accused Rajeev Saxena, who is an accused in Augusta Westland Case also, were used for receipt of commission from supplier of fertilizers and other products to IFFCO and IPL. During the commission of crime, sham consultancy agreements and fake invoices for consultancy services were prepared without providing any such services and thus commission was received by group companies of Rajeev Saxena without any genuine transaction and that money was actually illegal commission generated out of import of fertilizers and raw material.

5. It is alleged that accused Amarendra Dhari Singh acted as intermediary along with other accused for channelizing the ill gotten money through different firms and companies. It is alleged that in this manner, Rs. 685 Crores approximately were received in the bank accounts of the group companies and individual account of Rajeev Saxena and other accused including accused Amarendra Dhari Singh. It is alleged that the fertilizers were imported fraudulently at inflated rates

and the money was diverted abroad also through complex transactions. It is also the case of ED that in order to provide relief to the farmers, Government of India has been providing subsidies on different types of fertilizers and in calculating subsidy, the cost price of imported fertilizer is important and as such, due to the crime of accused persons, a huge loss also occurred to the public exchequer. It is also alleged that accused Amarendra Dhari Singh had companies namely Lake Village Assets Corp. and Summerpark Cor., which were used for transferring money to another company owned by co-accused. Money lying in the account of the companies of the accused abroad were used for making real estate investments.

6. On the basis of the aforementioned CBI's case, ED had registered an ECIR and the matter was taken up for investigation. During the course of investigation, ED had seized various documents/bank statements and had also recorded the statement under Section 50 of the Prevention of Money Laundering Act (**hereinafter referred to as PMLA**) of Sh. Rajeev Saxena and Sh. Sunil Gupta, Shubham Aggarwal and other employees of Alankit Group of Companies.

7. From the statement recorded of various witnesses under Section 50 of PMLA and the documents filed on record, it is apparent that on the basis of fake invoices, money in the form of commission was received from M/s.Uralkali General Trading, Gibraltar and Gulf

Marine, Dubai etc. in the various entities under the control of Rajeev Saxena like Midas Metal International and M/s. Pacific International and thereafter, Rajeev Saxena had transferred the said proceeds of crime on the instructions of Amarendra Dhari Singh, Pankaj Jain and Sanjay Jain to individuals Amol Awasthi, Anupam Awasthi, Vivek Gahlaut, Pankaj Jain, Sanjay Jain, Amarendra Dhari Singh and entities owned and controlled by these persons.

8. The said proceeds of crime were projected as consultancy income/management fees. It has also come on record in the statement of various witnesses that thereafter Triton Trading DMCC (entity of Rare Earth Group) of Sh. Pankaj Jain had transferred the proceeds of crime to M/s.Alankit Global Resources DMCC, Dubai and Alankit Assignments Limited DMCC, Dubai which were the companies under the chairmanship of accused Alok Kumar Agarwal. These two Alankit Group of Companies based in Dubai had further transferred the amount to Alankit Limited in India and thereafter, Alankit Limited had paid around Rs.28 Crores to accused Amarendra Dhari Singh and Rs.4.5 Crores to Chandra Shekhar Jha on behalf of accused Amarendra Dhari Singh and an amount of Rs.1,22,24,152/-was retained by accused Alok Kumar Agarwal being the money consideration for his illicit activities. Alankit Group of Companies was unable to produce any genuine consultancy agreement with Triton Trading DMCC from which it had received funds in their accounts.

9. After the completion of investigation, charge sheet in the form of complaint was filed against accused Amarendra Dhari Singh, accused Alok Kumar Agarwal, accused Sh. Chandra Shekhar Jha and three companies ie. Alankit Limited, Alankit Assignments Limited DMCC and Alankit Global Resources DMCC. In the complaint filed by the ED in the form of charge sheet, a prayer was made to permit the complainant i.e. ED to file supplementary complaint with regard to ongoing investigation.

10. During the course of investigation, petitioner/accused has been summoned on 24 occasions by the IO of ED for the purpose of interrogation with regard to the role of his proprietorship concern i.e. Alankit Management Consultancy, Dubai in the alleged offence of money laundering. Petitioner/accused apprehends that on the basis of similar allegations made against his father i.e. co-accused Alok Kumar Agarwal, he might be arrested in this case.

11. I have heard Mr. Siddharth Aggarwal, Ld. Sr. Advocate for the petitioner and Mr. Zoheb Hossain, Adv. (Special Counsel for ED/respondent) and perused the records of this case.

12. It is submitted by the Ld. Sr. counsel for the petitioner that the respondent has already conducted an investigation in the present case and has filed the prosecution complaint which is pending before the Ld. Special Court and the Ld. Special Court after due application of mind

has taken the cognizance of the offence and summoned the accused persons. It is further submitted by the Ld. Sr. counsel for the petitioner that the prosecuting agency has filed the main PC against six accused and now the respondent wants to incriminate the petitioner as an accused as he is the Managing Director and Director of the accused companies No. 4 and 5 namely Alankit Limited and Alankit Assignments Ltd. DMCC but the Ld. Special Judge has refused to summon the petitioner vide order dated 07.08.2021.

13. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has the apprehension of his arrest as the petitioner is one of the directors of M/s Alankit Limited and the said company has been arrayed as an accused No. 4 in the PC filed by the respondent. He further submitted that petitioner/accused has apprehension of his arrest because accused No. 2 in the said PC is the father of the petitioner who chairs Alankit Group of Companies and was previously arrested by the prosecuting agency and later on enlarged on bail. He further submitted that the petitioner has reasonable apprehension of his arrest as the respondent has been insisting on the summoning of the petitioner on behalf of accused No. 4 and 5 but the same has been declined which is evident from the copy of order dated 07.08.2021.

14. It is further submitted by the Ld. Sr. counsel for the petitioner that after the registration of the ECIR investigation was carried out and

during investigation co-accused AD Singh and Alok Kumar Aggarwal were arrested and they were remanded to police custody and now both these accused persons are on bail. He further submitted that all the material evidence has been collected during the investigation and after completion of the investigation PC had been filed in which the Court of Special Judge who had taken the cognizance of the offence had summoned all the accused persons as mentioned in the said P.C. He further submitted that the petitioner is not an accused in the said PC.

15. It is further submitted by the Ld. Sr. counsel for the petitioner that the respondent had filed its reply before the Special Judge and in the reply it has been submitted that there is no likelihood or apprehension of the arrest of the petitioner. But on the other hand, the said application was vehemently opposed by the respondent and in a sense the respondent had taken a contradictory stand. He further submitted that the Special Judge has mainly dismissed the application of the petitioner on the ground that the agreement between M/s Trans Agri DMCC and M/s Alankit Management Consultancies prima facie does not appear to be a genuine transaction and the witness in the complaint are the employees of the petitioner. He further submitted that there are no allegations against the petitioner that he tried to influence any witness or tried to tamper with the evidence despite the allegations that the offence was committed during the period 2018-2020.

16. It is further submitted by the Ld. Sr. counsel for the petitioner that according to the respondent it has been stated in the PC that the investigation to identify any further proceeds of crime related to schedule offence in the case is still in progress and a supplementary complaint may be filed as and when further proceeds of crime surfaces. He further submitted that the investigation cannot go on till infinity. He further submitted that in the entire complaint or the documents submitted with the complaint, the respondent has not disclosed as to which scheduled offence has been committed by the accused persons from which the proceeds of the crime were generated.

17. It is further submitted by the Ld. Sr. counsel for the petitioner that during the course of investigation, the petitioner has joined the investigation more than 20 times and has co-operated in the investigation by providing all the information and documents as per his knowledge. He further submitted that since the petitioner has joined the investigation number of times, no useful purpose would be served by taking him in custody. He further submitted that the punishment provided for the alleged offence is maximum imprisonment for a period of 7 years and fine, thus, the petitioner is squarely covered by the judgment passed by the Supreme Court in **Arnesh Kumar Vs. State, (2014) 8 SCC 273**. He further submitted that since the accused No. 2 namely Alok Kumar Aggarwal who is the father of the petitioner has been previously arrested, so the petitioner has reasonable

apprehension of his arrest at the hands of the respondent. He further submitted that Alankit Group of Companies is chaired by accused No. 2 Alok Kumar Aggarwal and interrogation qua the financial management and operations of the said group of companies has already been completed by the respondent agency and accused No. 2 Alok Kumar Aggarwal has already been released on bail by the Special Judge. He further submitted that there is no case or FIR in existence with any of the prosecuting agency which has registered any case pertaining to any schedule offence committed by the petitioner during the period 2018-2020. He further submitted that the entire investigation of the ECIR and subsequent prosecution is without the sanction of law.

18. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner was not involved in the affairs of the Alankit Group and he only used to supervise the administration and HR work whereas, accused Alok Kumar Aggarwal used to handle all the finance and operation related work. He further submitted that the petitioner has submitted all the agreements to the IO and the same were confronted by the IO with accused Alok Kumar Aggarwal at the stage of his interrogation. He further submitted that the petitioner has reasonable apprehension of his arrest as the respondent has filed charge sheet-cum-prosecution complaint and cognizance of the offence has been taken by the Ld. Special Judge vide order dated 07.08.2021. He

further submitted that the statements of the witnesses and Chairman of the Alankit Group of Companies have already been recorded and the respondent has failed to show any ground that the custodial interrogation of the petitioner is necessary. He further submitted that even as per the respondent, the petitioner is not a flight risk nor there are allegations that he has tried to tamper with the prosecution evidence. He further submitted that the petitioner satisfies the triple test as observed in the **P. Chidambaram's** case.

19. It is further submitted by the Ld. Sr. counsel for the petitioner that no offence U/s 3 of PMLA has been committed by the petitioner and the PC does not disclose commission of any schedule offence in referenced to the alleged transactions. He further submitted that the petitioner's companies had made genuine business transactions by executing legal agreements with M/s Tritron Trading, DMCC wherein goods have been delivered in India during 2018-2019 and the copy of the said agreement alongwith the invoices and the bank details had already been submitted to the respondent. He further submitted that accused Chandershekhar Jha was charge sheeted without arrest and has been granted regular bail by the Ld. Special Judge and no useful purpose would be served by keeping the petitioner in J.C. as no recovery is to be effected from him.

20. Ld. Sr. counsel for the petitioner has relied upon the following judgments :

- (a) Siddharth Vs. State of UP vide Criminal Appeal No. 838 of 2021 (Arising out of SLP (Crl.) No. 5442/2021.
- (b) Arnesh Kumar Vs. State, (2014) 8 SCC 273.
- (c) P. Chidambaram Vs. Enforcement Directorate vide Criminal Appeal No. 1831/2019, arising out of SLP (Criminal) No. 10493 of 2019.

21. On the other hand, it is submitted by the Ld. Special Counsel for the respondent (ED) that the petitioner has failed to make out a case for grant of anticipatory bail as he has not been able to show that he has reasonable apprehension of arrest and the apprehension shown by him is vague and a mere fear does not warrant exercise of power U/s 438 of Cr.P.C. In this regard, he has relied upon **Sh. Gurbaksh Singh Sibbia & Ors. Vs. State of Punjab (1980) 2 SCC 565**. It is further submitted by the Ld. Special Counsel that the grant of anticipatory bail at the stage of investigation would hamper the effective investigation and the power U/s 438 Cr.P.C ought not to be exercised in favour of the petitioner and he relied upon **P. Chidambaram Vs. Directorate of Enforcement, (2019) 9 SCC 24**. Ld. Special Counsel for the respondent (ED) has also relied upon the judgment delivered on

26.08.2021 by the Allahabad High Court in **Pankaj Grover Vs. Directorate of Enforcement (Crl. Misc. Anticipatory Bail Application 7661 of 2021)**.

22. It is further submitted by the Ld. Special Counsel for the respondent (ED) that the investigation in the present case is being conducted vigorously and the prosecution complaint has already been filed against six accused and cognizance of the same has been taken by the Special Court. He further submitted that further investigation are required to be conducted as what has been uncovered so far may be the proverbial tip of the iceberg and the amount of proceeds of crime is much higher than amount detected so far and blanket protection may not be granted to the offenders in the form of anticipatory bail order.

23. In the instant case, as per the respondent, the prosecution complaint has already been filed against six accused persons and cognizance has been taken by the Special Court vide order dated 07.08.2021 and summons have been issued to accused No. 1 to 6 and the name of the petitioner does not figure in the array of six summoned accused. The respondent had sought the summoning of accused Nos. 4 and 5 companies through the present petitioner but the Special Judge had refused to issue summoning order against accused Nos. 4, 5 and 6 companies through the present petitioner or through accused Alok Aggarwal observing that ED cannot dictate as to who is going to

represent accused No. 4 to 6 companies. So, the Ld. Special Judge has not summoned the petitioner in the capacity of the Director of accused No. 4 and 5 companies.

24. In the present case, it is not disputed by the respondent that the petitioner has not joined the investigation. Rather, it is on record that the petitioner has joined the investigation more than 20 times. The statements of the witnesses U/s 50 of PMLA have already been recorded and there is only an apprehension that the petitioner would tamper with the evidence or threaten the witnesses but till date nothing has been placed on record to show that any such attempt has been made by the petitioner in this regard and there appears to be only an apprehension in this regard. All the documents have been seized by the respondent and have been filed alongwith the charge sheet in the court of Special Judge.

25. As far as the question of apprehension of arrest is concerned, the father of the petitioner had already been arrested who was later on granted regular bail by the Special Judge and as far as the petitioner is concerned, he has been called time and again by the respondent (ED) and when he moved his anticipatory bail application before the Ld. Special Judge, it was opposed tooth and nail by the respondent, so it cannot be said that the apprehension in the mind of the petitioner in regard to his arrest is a mere fear or it is a vague apprehension.

26. Cognizance in the instant case has been taken by the Special Judge on 07.08.2021 and till date nothing fresh has been filed by the respondent in the form of supplementary complaint before the Special Judge and it is also not the case of the respondent that thereafter the petitioner has not been joining the investigation. Merely on the assumption of the respondent that till date what has been uncovered is may be the tip of the iceberg and the proceeds of the crime may be much higher, damocles sword cannot be allowed to hang over the head of the petitioner when there are no allegations against him of threatening any witness or tampering with the evidence or he is a flight risk or not co-operated in the investigation and as far as the factual matrix is concerned, those are matter of trial. Three co-accused have already been released on regular bail and even against one accused charge sheet was filed without arrest.

27. There is nothing to show that as to for what purpose, the custodial interrogation of the petitioner is required and the alleged offence entail maximum sentence of 7 years with fine, therefore, keeping in view the entire facts and circumstances, the present bail application is allowed and it is ordered that in the event of arrest of the petitioner in ECIR No. DLZO-I/43/2021 and case bearing CC No. 17/21 titled as Directorate of Enforcement Vs. Amarendra Dhari Singh & Others registered under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002, he be released on bail on

his furnishing a personal bond in the sum of Rs. 5,00,000/- with one surety of the like amount subject to the satisfaction of the IO concerned. However, the petitioner is directed to join the investigation as and when called by the IO and in case he fails to join the investigation or try to tamper with the evidence or threaten the witnesses, the respondent (ED) is at liberty to move an application for cancellation of his bail. The bail application is disposed of accordingly.

28. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

OCTOBER 26, 2021

Sumant

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