

**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM No. M-42455 of 2016

Date of Decision: 28.02.2017

Harmesh Kumar Gaba

.....Petitioner

Vs.

Assistant Director, Directorate of Enforcement

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. P.S. Ahluwalia, Advocate for the petitioner.

Ms. Ranjana Sahi, Advocate for the respondent.

SURYA KANT, J.(Oral)

The petitioner seeks pre-arrest bail in criminal complaint No.1 dated 22.01.2016 in case ECIR No.02/JLZO/2013 filed by the Enforcement Directorate under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA') which is pending in the Court of learned Special Judge, Patiala.

There are several persons including the petitioner who have been arrayed as accused in the above stated complaint. The main allegations in the complaint are against Chunni Lal Gaba who is brother of the petitioner and Gurjit Kumar Gaba who is son of Chunni Lal Gaba. Against both of them, cases under the NDPS Act have also been registered

and there are specific allegations of manufacturing and sale of illicit drugs/ contrabands against them. The company in which Chunni Lal Gaba and Gurjit Kumar Gaba are Directors, namely, M/s Medcare Remedies Pvt. Ltd is also co-accused.

So far as the petitioner is concerned, no case under NDPS Act has been registered against him and he is not a Director in M/s Medcare Remedies Pvt. Ltd. The Companies/ firms in which the petitioner is a Director/ partner are not accused of committing any offence in Part 'A' of the Schedule of PMLA.

The investigation in the instant complaint is over and whenever the petitioner was summoned, he appeared before the E.D. It is not alleged by E.D. that the petitioner was non-cooperative or he deliberately did not divulge the information. Be that as it may, if the petitioner has shown any reluctance in divulging the information in a subsequent matter under investigation, that will constitute an independent offence within the meaning of PMLA, 2002 for which the E.D shall be at liberty to proceed against him in accordance with law.

So far as the complaint in hand is concerned, the investigation is over and its cognizance has already been taken. Since the petitioner was not required and was not taken into custody during the course of investigation of the instant complaint, no useful purpose shall be served by putting him in judicial custody at this stage. It thus appears to be a fit case for grant of pre-arrest bail.

That apart, it is seriously doubtful whether rigors of Section 45

of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part 'A' of the Schedule attached to PMLA, 2002. Similarly, since the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D under Section 19 of the Act, we see no reason whatsoever as to why the petitioner's liberty be curtailed by sending him to judicial custody at this juncture.

At best, with a view to ensure that the outcome of the complaint is not affected in any manner, the petitioner can be restrained from alienating and/or creating any third party rights in respect of his attached properties or such other properties which are subject matter of the complaint and/or are under investigation.

For the reasons afore-stated, the instant petition is allowed. It is directed that the petitioner on surrender before the learned Special Judge, Patiala shall furnish the bail bonds to the satisfaction of the said Court and he shall be admitted to interim bail subject to the following terms:-

- (i) the petitioner shall not leave the country without prior permission of the Special Court or this Court;
- (ii) the petitioner shall continue to appear before the Special Court and shall not hamper the ongoing trial;
- (iii) the petitioner shall continue to avail the concession of bail subject to the attachment/ seizure of his immovable properties already identified by the Enforcement Directorate;

- (iv) the learned Special Judge shall ensure that in this case no order to release the attached properties is passed;
- (v) the petitioner shall also abide by such other conditions as may be imposed by learned Special Judge while accepting his bail bonds.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

28.02.2017

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| Whether Speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |