THE DIRECTORATE OF ENFORCEMENT

v.

M. GOPAL REDDY & ANR.

(Criminal Appeal No. 534 of 2023)

FEBRUARY 24, 2023

[M. R. SHAH* AND C. T. RAVIKUMAR, JJ.]

Prevention of Money Laundering Act, 2002 – s.45 – Applicability of, to applications u/s.438, CrPC – Held: Once the prayer for anticipatory bail is made in connection with offence under the 2002 Act, the underlying principles and rigours of s.45 must get triggered, although the application is u/s.438, CrPC – In the present case, once the enquiry/investigation against respondent No. 1 was going on for the offence under the 2002 Act, the rigour of s.45 of the 2002 Act would be attracted – Impugned order passed by the High Court holding that the provisions of s.45 shall not be applicable w.r.t the anticipatory bail applications u/s.438, CrPC and granting anticipatory bail to respondent No.1 is unsustainable – Further, the impugned order is erroneous even on merits, set aside – Code of Criminal Procedure, 1973 – s.438.

Code of Criminal Procedure, 1973 – s.438 – Exercise of discretion under – Economic offences – Held: In case of economic offences having an impact on the society, the Court must be very slow in exercising the discretion u/s.438.

Allowing the appeal, the Court

HELD:

1.1 Respondent No. 1 is apprehending his arrest in connection with the complaint/case by the ED for the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the said Act. An enquiry/investigation is going on against respondent No. 1 for the scheduled offence in connection with FIR No. 12/2019. Once the enquiry/investigation against respondent No. 1 is going on for the offence under the Act, 2002, the rigour of Section 45 of the Act, 2002 would

* Author

be attracted. By the impugned judgment and order, while granting anticipatory bail the High Court has observed that the provisions of Section 45 of the Act, 2002 shall not be applicable with respect to the anticipatory bail applications/ proceedings under Section 438 Cr.PC. For which the High Court has relied upon the decision of this Court in the case of *Nikesh Tarachand Shah.* In the case of *Dr. V.C. Mohan,* this Court has specifically observed and held that it is the wrong understanding that in the case of *Nikesh Tarachand Shah* this Court has held that the rigour of Section 45 of the Act, 2002 shall not be applicable to the application under Section 438 Cr. PC. In the case of *Dr. V.C. Mohan* in which the decision of this Court in the case of *Nikesh Tarachand Shah* was pressed into service, it is specifically observed by this Court that it is one thing to say that Section 45 of the Act, 2002 to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the Act, 2002, the underlying principles and rigours of Section 45 of the Act, must get triggered – although the application is under Section 438 Cr.PC. Therefore, the observations made by the High Court that the provisions of Section 45 of the Act, 2002 shall not be applicable in connection with an application under Section 438 Cr.PC is just contrary to the decision in the case of *Dr.V.C. Mohan* and the same is on misunderstanding of the observations made in the case of *Nikesh Tarachand Shah.* Once the rigour under Section 45 of the Act, 2002 shall be applicable the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is unsustainable. [Paras 5 and 5.1]

1.2 Even otherwise on merits also, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is erroneous and unsustainable. While granting the anticipatory bail to respondent No. 1 the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offence(s) under the Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly. In case of economic offences,

which are having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.PC.[Paras 6 and 6.3]

1.3 The rigour of Section 45 of the Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.PC and therefore, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is unsustainable. [Para 7]

Nikesh Tarachand Shah Vs. Unoin of India and Anr. **(2018) 11 SCC 1 : [2017] 12 SCR 358;** *The Asst. Director Enforcement Directorate Vs. Dr. V.C. Mohan* **2022 SCC OnLine SC 452;** *P. Chidambaram Vs. Directorate of Enforcement* **(2019) 9 SCC 24:[2019] 12 SCR 172 – relied on.**

Y.S. Jagan Mohan Reddy Vs. CBI **(2013) 7 SCC 439 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.534 of 2023.

From the Judgment and Order dated 02.03.2021 of the High Court of Telangana at Hyderabad in Criminal Petition No.1148 of 2021.

K.M. Nataraj, A.S.G., Mukesh Kumar Maroria, Sharath Nambiar, S.A. Haseeb, Mukul Singh, Deepabali Dutta, Zoheb Hussain, Kanu Agarwal, Rajan Kumar Choursia, Mukul Singh, Nakul Chengapa K.K., Advs. for the Appellant.

Vikas Singh, Aman Lekhi, Sr. Advs., Santosh Kumar Tripathi, Siddharth Krishna Dwivedi, Ms. Deepeika Kalia, Aditya Kaul, Vijay Agarwal, Varun K. Chopra, Yugant Sharma, Tushar, Mehul Sharma, M/s. VKC Law Offices, Aniket Seth, Ujjawal Sinha, Ritwiz Rishab, Snehil Sonam, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.03.2021 passed by the High Court of Telangana at Hyderabad in Criminal Petition No. 1148/2021, by which, the High Court has allowed the said bail application and has granted the anticipatory bail in favour of respondent No. 1 herein and has directed to release him on bail in the event of his arrest in connection with F. No. ECIR/

HYZO/36/2020 dated 15.12.2020 on the file of the Assistant Director, Enforcement Directorate (hereinafter referred to as the ED), Government of India, Hyderabad, which was registered for the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the Act, 2002) and punishable under Section 4 of the said Act, the Directorate of Enforcement has preferred the present appeal.

2. A FIR was registered by Economic Offences Wing (EOW), Bhopal vide FIR No. 12/2019 dated 10.04.2019 wherein 20 persons/companies were named as suspected in the said scam. M/s Max Mantena Micro JV, Hyderabad was one among them.

2.1 As per the FIR, the Government of Madhya Pradesh e Procurement Portal was being run by MPSEDC. M/s Antares Systems Limited, Bangalore and M/s Tata Consultancy Services (TCS) were given the contract for the period of 5 years for the maintenance & operation of the said portal. Some of the officials of MPSEDC in collusion with the companies entrusted with maintenance and testing of the portals namely M/s Osmo IT Solutions and M/s Antares Systems Ltd, illegally accessed the eTender portal and rigged the bidding process to suit a few private bidders for huge amounts of bribe considerations.

2.2 As per the investigating agency, the preliminary investigation by the Police established that various e tenders were illegally accessed and bids of a few companies were manipulated to illegally make the bids of those concerns as the lowest one.

2.3 Apart from tenders mentioned in the first preliminary charge sheet filed by the EOW Bhopal namely No. 91, 93, 94 (Water Resource Dept); 2 tenders vide Nos. 49985 & 49982 of PWD; Tender no 49813, Tender No. 786 of MPRDC; and Tenders vide Nos. 10030 & 10044, it was suspected that many other tenders have also been tampered using the same modus operandi. M/s Mantena Group of Companies, Hyderabad, was suspected to be a major beneficiary of this etender scam. As per the EOW charge sheet, a joint venture of the Mantena Group known as M/s Max Mantena Micro JV is the direct beneficiary of a tampered etender No. 10030 worth Rs. 1020 Crore.

2.4 According to the investigating agency, the investigation into the said FIR for the offences under Sections 120B, 420, 471 IPC and

Section 7 r/w Section 13(2) of Prevention of Corruption (PC) Act is going on and the said offences are scheduled offences under the Act, 2002. The ED has initiated money laundering investigation in File No. ECIR/HYZO/36/2020.

2.5 According to the ED, in order to gather evidence, a search operation was conducted under the provisions of Section 17(1) of PMLA, 2002. Accordingly, 18 premises were searched including the residences of the promoters and offices of M/s Mantena Constructions Ltd, M/s Anteras Pvt Ltd, M/s Osmo IT Solutions Pvt Ltd, M/s Arni Infra, etc. a good amount of incriminating documents and digital devices have been seized and are being examined for evidence. It is clear from the ED investigation done so far that a systematic conspiracy has been planned and executed by a number of infrastructure companies based at Hyderabad in collusion with a few Government officials and IT management companies to illegally win etenders. Further large amounts of bribes running into crore(s) of rupees have exchanged hands using hawala channels. The public funds meant for development activities have been diverted and siphoned off for personal illegal enrichment and for making illegal bribe payments. The appellant department has recovered fund trail evidence and generation of black money through bogus and overbilling by the infra companies.

2.6 That respondent No. 1 herein who at the relevant time was the Additional Chief Secretary in the Water Resources Department in the State of Madhya Pradesh, was summoned by the ED to explain the sudden spurt in the allocation of tenders to M/s Mantena Construction during his stint in the State of MP.

2.7 That apprehending his arrest in connection with ED case for the scheduled offence under the Act, 2002, respondent No. 1 herein approached the High Court by way of present anticipatory bail application under Section 438 Cr.PC. Without considering the rigour/bar under Section 45 of the Act, 2002 and observing that as per the decision of this Court in the case of **Nikesh Tarachand Shah Vs. Unoin of India and Anr.; (2018) 11 SCC 1,** the provisions of Section 45 of the Act, 2002 do not apply to Section 438 Cr.PC proceedings, the High Court has allowed the anticipatory bail application and has directed that in case of his arrest in connection with ED case he be released on bail.

2.8 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 in ED case, the Directorate of Enforcement (ED) has preferred the present appeal.

3. Shri K. M. Nataraj, learned ASG, appearing on behalf of the ED – appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a very serious error in allowing the anticipatory bail application and granting anticipatory bail to respondent No. 1 in connection with ED case under the Act, 2002.

3.1 It is submitted that as such the High Court has materially erred in observing that the provisions of Section 45 of the Act, 2002 shall not be applicable to Section 438 Cr.PC proceedings. It is submitted that for that the High Court has erred in relying upon the decision of this Court in the case of **Nikesh Tarachand Shah (supra).** It is submitted that subsequently in the case of **The Asst. Director Enforcement Directorate Vs. Dr. V.C. Mohan (2022 SCC OnLine SC 452) (Criminal Appeal No. 21/2022),** this Court has clarified that it is the wrong reading of the decision in the case of **Nikesh Tarachand Shah (supra)** that the provisions of Section 45 of the Act, 2002 shall not be applicable to the anticipatory bail proceedings. It is submitted that in the case of **Dr. V.C. Mohan (supra)** it is specifically observed and held by this Court that Section 45 of the Act, 2002 shall be applicable with respect to the offences under the Act, 2002 and the rigour of Section 45 of the Act, 2002 shall get triggered – although the application is under Section 438 of Cr.PC. It is submitted that therefore, the impugned judgment and order passed by the High Court is just contrary to the decision of this Court in the case of **Dr. V.C. Mohan (supra).**

3.2 It is further submitted by Shri K.M. Nataraj, learned ASG appearing on behalf of the ED that even otherwise while granting the anticipatory bail the High Court has not properly appreciated and/or considered the seriousness of the offences which are scheduled offences under the Act, 2002. It is submitted that the High Court has considered the anticipatory bail application, as if, the High Court was dealing with the prayer for anticipatory bail in connection with the ordinary offences under IPC.

3.3 It is further vehemently submitted by learned ASG that during investigation, the ED investigation has established that there is a nexus between Srinivas Raju Mantena and respondent No. 1 herein and the same needs to be investigated in detail.

3.4 It is submitted that the ED had gathered material which indicates nexus between respondent No. 1 and Srinivas Raju Mantena, who is found to have committed the offences of money laundering. It is submitted that respondent No. 1 was summoned by ED but instead of appearing before the IO, he filed a criminal petition before the High Court and obtained the interim relief. It is submitted that he appeared before the ED and his statement was recorded under Section 50 of the Act, 2002. It is submitted that however on both the occasions he was totally evasive and noncooperative and therefore, his custodial interrogation is required.

3.5 It is further submitted by learned ASG that during the investigation the ED has found that respondent No. 1 had availed and enjoyed free trips in last one year alone on the luxury plane of Mantena on multiple occasions. It is submitted that during investigation it has been found that respondent No. 1 had also availed other patronages from Srinivas Raju Mantena like sponsoring foreign exchange through Hawala Channels for his son.

3.6 It is submitted that while granting anticipatory bail to respondent No. 1 the High Court has not considered the nature of allegations and seriousness of offences alleged against respondent No. 1 who at the relevant time was working as an Additional Chief Secretary.

3.7 Making the above submissions and relying upon above decision as well as the decision of this Court in the case of **P. Chidambaram Vs. Directorate of Enforcement; (2019) 9 SCC 24** as well as the decision in the case of **Y.S. Jagan Mohan Reddy Vs. CBI; (2013) 7 SCC 439,** it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court.

4. Present appeal is vehemently opposed by Shri Vijay Agarwal, learned counsel appearing on behalf of respondent No. 1 herein.

4.1 It is vehemently submitted by learned counsel appearing on behalf of respondent No. 1 that in the facts and circumstances of the case

the High Court has not committed any error in granting anticipatory bail to respondent No. 1.

4.2 It is vehemently submitted that in the present case so far as the main FIR is concerned, the other accused have been acquitted/ discharged. It is submitted that as held by this Court in the catena of decision that if the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

4.3 It is further submitted that in the present case even respondent No. 1 was not named in the FIR for the scheduled offence(s).

4.4 It is further submitted that the offence under the Act, 2002 is dependent on predicate offence which would be ordinary law including the provisions of the IPC. It submitted that therefore, as other accused persons have been acquitted/discharged for the predicate offence/schedule offence there is no question of any offence by respondent No. 1 under the Act, 2002/money laundering.

4.5 It is further submitted by learned counsel appearing on behalf of respondent No. 1 that while granting the anticipatory bail the High Court has followed the decision of this Court in the case of **Nikesh Tarachand Shah (supra),** the law which was prevalent at the relevant time.

4.6 It is submitted that the prospective overruling of the said decision by this Court in the case of **Dr. V.C. Mohan (supra)** therefore, cannot be pressed into service while challenging the impugned judgment and order passed by the High Court granting anticipatory bail relying upon the decision/law prevalent at the relevant time.

4.7 It is further submitted by learned counsel appearing on behalf of respondent No. 1 that in the present case cogent reasons have been given by the High Court while granting anticipatory bail to respondent No. 1 and considering the fact that respondent No. 1 has cooperated in the investigation and appeared twice earlier before the IO/ED, the impugned judgment and order passed by the High Court granting anticipatory bail may not be interfered with by this Court.

5. We have heard learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that respondent No. 1 is apprehending his arrest in connection with the complaint/case by the ED for the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the said Act. An enquiry/investigation is going on against respondent No. 1 for the scheduled offence in connection with FIR No. 12/2019. Once the enquiry/investigation against respondent No. 1 is going on for the offence under the Act, 2002, the rigour of Section 45 of the Act, 2002 would be attracted. Section 45 of the Act, 2002 reads as under:

"45. Offences to be cognizable and nonbailable.—

(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, 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:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co accused of moneylaundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by

—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police

officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

5.1 By the impugned judgment and order, while granting anticipatory bail the High Court has observed that the provisions of Section 45 of the Act, 2002 shall not be applicable with respect to the anticipatory bail applications/proceedings under Section 438 Cr.PC. For which the High Court has relied upon the decision of this Court in the case of **Nikesh Tarachand Shah (supra).** In the case of **Dr. V.C. Mohan (supra),** this Court has specifically observed and held that it is the wrong understanding that in the case of **Nikesh Tarachand Shah (supra)** this Court has held that the rigour of Section 45 of the Act, 2002 shall not be applicable to the application under Section 438 Cr. PC. In the case of **Dr. V.C. Mohan (supra)** in which the decision of this Court in the case of **Nikesh Tarachand Shah (supra)** was pressed into service, it is specifically observed by this Court that it is one thing to say that Section 45 of the Act, 2002 to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the Act, 2002, the underlying principles and rigours of Section 45 of the Act, must get triggered – although the application is under Section 438 Cr.PC. Therefore, the observations made by the High Court that the provisions of Section 45 of the Act, 2002 shall not be applicable in connection with an application under Section 438 Cr.PC is just contrary to the decision in the case of **Dr. V.C. Mohan (supra)** and the same is on misunderstanding of the observations made in the case of **Nikesh Tarachand Shah (supra).** Once the rigour under Section 45 of the Act, 2002 shall be applicable the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is unsustainable.

6. Even otherwise on merits also, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is erroneous and unsustainable. While granting the anticipatory bail to respondent No. 1 the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offence(s) under the Act, 2002. Looking to the nature

of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly. As per the investigating agency, they have collected some material connecting respondent No. 1 having taken undue advantage from Srinivas Raju Mantena. From the impugned judgment and order passed by the High Court, it appears that the High Court has considered the matter, as if, it was dealing with the prayer for anticipatory bail in connection with the ordinary offence under IPC.

6.1 Now so far as the submissions on behalf of respondent No. 1 that respondent No. 1 was not named in the FIR with respect to the scheduled offence and that the other accused are discharged/ acquitted is concerned, merely because other accused are acquitted, it cannot be a ground not to continue the investigation against respondent No. 1. An enquiry/investigation is going on against respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation itself is sufficient at this stage.

6.2 While granting the anticipatory bail, what is weighed with the High Court and what is observed by the High Court is as under:

> "A careful reading of the aforesaid legal position and in the light of the circumstances of the case on hand, which clearly indicates that the 1st respondent has a doubt regarding the involvement of the petitioner in commission of the crime and he is being summoned for disclosure and in case of his nondisclosure of any material, on the pretext of noncooperation, the 1st respondent may proceed to arrest him. The petitioner is a retired employee aged about 60 years and is a permanent resident of Hyderabad, Further, major part of the investigation has been completed with respect to the incriminating documents and digital devices, which have already been seized. Hence, there may not be a chance of tampering with the investigation at this stage, because as rightly pointed out by the learned Senior Counsel for the petitioner that a criminal case has already been filed against the other accused and the same is pending before the Special Court at Bhopal."

6.3 From the aforesaid, it can be seen that the High Court has not at all considered the nature of allegations and the seriousness of the offences alleged against respondent No. 1. As per the catena of decision of this Court, more particularly, observed in the case

of **P. Chidambaram (supra)** in case of economic offences, which are having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.PC.

7. Considering the overall facts and circumstances of the case and the reasoning given by the High Court and as observed hereinabove, the rigour of Section 45 of the Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.PC and therefore, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 herein in connection with F. No. ECIR/HYZO/36/2020 dated 15.12.2020 is unsustainable. Consequently, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is hereby quashed and set aside. Respondent No. 1 be dealt with in accordance with law. However, it is observed and made clear that after respondent No. 1 is arrested, if he files any regular bail application, the same be considered in accordance with law and on its own merits and considering the material collected during enquiry/investigation of the case. Present appeal is accordingly allowed. No costs.

Headnotes prepared by: Divya Pandey (*Assisted by:* Abhishek Pratap Singh and Shevali Monga, LCRAs)

Result of the case: Appeal allowed.