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06.04.2023

Today is fixed for production of accused persons from J/C and hearing of the bail petitions dated 27.03.2023.

Accused persons namely Sailesh Kumar Pandey and Prasenjit Das are produced before this Court today.

Ld. Special PP of this case namely Bhaskar Prosad Banerjee is present.

Complainant Manish Kumar, Assistant Director, Enforcement Directorate, Kolkata Zonal Office-II files a complaint under Section 44 r.w Section 45 of Prevention of Money Laundering Act, 2002 against the accused persons namely (1) Prasenjit Das (2) Sailesh Kumar Pandey, (3) M/s Verozi Hotels & Hospitality Pvt. Ltd. (4) M/s Avonarc Infra Pvt. Ltd. (5) M/s Nexateq Innovation Pvt. Ltd. (6) M/s Grovanta Agro Pvt. Ltd. (7) M/s Actileaf Agro Pvt. Ltd. & (8) M/s TPG Commercials Pvt. Ltd. for the offence committed under Section 3 punishable under Section 4 of PMLA Act, 2002.

Ld. Spl. PP for ED Mr. Bhaskar Prosad Banerjee is present.

I.O of this case is also present.

Heard Ld. Spl. PP for the ED.

Perused the petition of complaint and the documents annexed thereto wherefrom, it appears that the complaint is made out against accused No. (1) Prasenjit Das (2) Sailesh Kumar Pandey, (3) M/s Verozi Hotels & Hospitality Pvt. Ltd. (4) M/s Avonarc Infra Pvt. Ltd. (5) M/s Nexateq Innovation Pvt. Ltd. (6) M/s Grovanta Agro Pvt. Ltd. (7) M/s Actileaf Agro Pvt. Ltd. & (8) M/s TPG Commercials Pvt. Ltd. for commission of offence under Section 3 punishable under Section 4 of the PMLA Act, 2002.

Since, the complainant is a public servant, Assistant Director of ED, Government of India and duly authorized by Central Government, accordingly, there is no necessity to examine the said complainant and she is exempted from examination under Section 200 of Cr.P.C.

It is mentioned in the complaint under paragraph 9.1 that an amount of Rs. 1182780040.87/- is provisionally attached. Further searches were conducted on 180 bank accounts and an amount of Rs. 1210216838.27 is lying in the said bank accounts which is mentioned in scheduled - C and all this have been frozen. Altogether approximately Rs. 2100 crore is collected of public funds in the accounts of Dummy Firms. On perusal of the complaint and document annexed thereto, I find that the complainant has been able to make out a prima facie case against the accused persons for the offence committed under Section 3 of PMLA Act which is punishable under Section 4 of the said Act and accordingly, cognizance is taken under Section 3 r.w Section 70 of PMLA Act punishable under Section 4 of the said Act against all the accused persons.

It has further stated on behalf of the complaint as pleaded in Paragraph 17 of the said complaint that that the Prosecuting agency reserves its right of further investigation.

Heard Ld. Spl. Counsel for the ED Mr. Bhaskar Prosad Banerjee and considered.

Copy of complaint petition is served upon the accused persons through the Ld. Advocate on their behalf.

Ld. Spl. PP for the ED submitted that the accused person namely Prasenjit Das who is in custody is also the Director of the accused Companies. Accordingly, the summons to the accused Companies be served through the accused person in custody.

Considered the submission. As per the complaint the accused Companies Nos. 3 to 8 are shown to be represented through its Director Prasenjit Das. Accordingly, the prayer is allowed. The summons to the accused Company No. 3 to 8 be served through the Director of the said companies namely Prasenjit Das (A-1).

Copy of this order be given to the I.O through the Ld. Spl. PP.

D/C by me

Judge,
Special (CBI) Court No. 1,
Calcutta (I/C).

Judge,
Special (CBI) Court No. 1,
Calcutta (I/C).

(2)

Later

Today is fixed for hearing two bail petitions filed for each of the accused persons on 27.03.2023. The Enforcement Directorate filed written objection against the bail prayer on 03.03.2023. Ld. Advocate for the accused persons submitted a written rejoinder.

All these petitions are taken up together for hearing today.

It is stated that on the strength of order dated 18.01.2023, the accused/petitioners were produced on 21st Jan, 2023 in this Court, while they were already in custody in another case being Hare Street PS (DD/BFS) Case No. 290/2022 corresponding GR. Case No. 1202/ 2022.

That after production of the accused before this Court on 21.01.2023 the custody order was recalled by this Court, but in the meantime the petitioners being the accuseds of the said Hare Street P.S. (DD/BFS) Case No. 290/2022 corresponding GR No. 1202/2022 remained in Judicial custody till 8th February, 2023 in the said other cases. The petitioners were granted bail in the said other case on 6th February, 2023, but release order was only granted on 8th February, 2023 and petitioners were released on bail.

In the meantime the Prosecution/E.D preferred an application being C.R.R. 263 of 2023 before the Hon'ble High Court, Calcutta and the custody recall order remained stayed on and from 25.02.2023, and finally, it was set aside on 09.02.2023 vide order of the Hon'ble High Court, Calcutta.

Even after setting aside of the custody recall order, effectively the petitioners have been in custody in this case as well from 21st January to 8th February, 2023 i.e 18 days. Since the recall order was set aside, and accused persons were actually and physically still under custody, therefore that period has also to be counted as if the accused/petitioners were remanded in custody in this case as well as the recall order ceases to exist or have any effect.

The custody recall order was set aside by the Hon'ble High Court, Calcutta on 9th February, 2023, your petitioner being the law abiding citizen of India voluntarily surrendered again and went to custody on and from 9th February, 2023.

The accused persons are in custody on and from 9th February, 2023.

It is argued that as on 23rd February, 2023 60 days was completed without charge sheet being submitted and accused persons were not offered statutory bail in violation of the law. On the date of filing of this petition i.e 27.03.2023, the accused persons have completed 64 days in custody and so accused/petitioners is entitled to statutory bail under 167(2) for the offence punishable under Section 3/4 PMLA where maximum imprisonment can be 7 years for the case alleged against the accused/petitioners.

It is also argued that the detention of the accused persons was also confirmed by the Hon'ble Calcutta High Court on 25.01.2023 when the operation of the order of this Court dated 21.01.2023 was stayed till 30.01.2023.

In support of this argument Ld. Advocate for the accused persons referred an observation of the Hon'ble Apex Court (Niranjan Singh and others Vs. Prabhakar Rajaram Kharote and others). The judgment was authored by the Hon'ble Justice V.R. Krishnan Iyer. In that judgment the idea of custody was defined.

Further in another referred case of the Hon'ble Apex Court (Sundeep Kr. Bafna Vs. State of Maharashtra and others the meaning of custody is defined under paragraph -9 of the judgment. One more judgment of the Hon'ble Apex Court (Rakesh Kr. Paul Vs. State of Assam) and another judgment of Hon'ble Orissa High Court (Deepak Gupta Vs. Enforcement Directorate of India) is referred on the same point.

The Ld. Advocate for the accused persons argued that the judgment referred for the ED in the written objection is not at all applicable in this case. The accused persons have already completed more than the statutory period of 60 days in custody before the complaint is filed after conclusion of investigation. They are entitled to get statutory bail. Accordingly, the accused persons be released on bail on any condition and the accused persons are ready to furnish their bail bond as per the direction of the Court.

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(3)

Ld. Spl. PP for the ED Mr. Bhaskar Prosad Banerjee submitted that the entire submissions for the accused persons is misconceived.

It is argued that both the accused persons were arrested by the ED on 9th February, 2023 by following the procedure was prescribed in law and was produced before this Court on 9th February, 2023 and thereafter the ED remand of the said accused was allowed by this Court.

The day in which the ED has got physical custody of the said accused persons by virtue of the order of the Hon'ble High Court and also by this Court and also the day the said accused person has been arrested shall be the day in which the statutory period of 60 days shall be counted. As such the averments made by the accused person are without any basis and have no legs to stand. It is submitted that in the judgment of the Hon'ble Supreme Court in the matter Titled as ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA VERSUS KAPIL WADHAWAN & ANR ETC. CRIMINAL APPEAL NOS. 701-702 OF 2020 dated 27th March, 2023 has held as follows:

Para 6: The core issue that arises for consideration is whether the date of remand is to be included or excluded, for considering a claim for default bail, when computing the 60/90 day period as contemplated in proviso (a) of Section 167(2) of the Cr.P.C. The moot question has been considered by this Court in various cases, but there is a divergence of opinion on how the stipulated period, for the right of default bail, accruing to the accused, is to be computed. Some judgments have favoured the exclusion of date of remand, while a contrary view is taken in other cases.

Para 50: We therefore declare that the stipulated 60/90 day remand period under Section 167 Cr.P.C ought to be computed from the date when a Magistrate authorizes remand.

It is further argued that initially the order of this Court was stayed till 30.01.2023 but by the subsequent order of the Hon'ble Calcutta High Court dated 31.01.2023 the sad order of stay was not extended. Furthermore, the accused persons were released on bail granted by the Ld. CMM, Calcutta in connection with the Hare Street PS case before they appeared before the Hon'ble Calcutta High Court on 09.02.2023. On that day as per the direction of the Hon'ble High Court the accused persons were taken into custody and also produced before this Court. On that day by the order of this Court the accused persons were remanded to the custody of the ED.

The Spl. PP for the ED prayed for rejection of the bail prayer.

I have already mentioned the contents of the bail prayer to the effect that after production of the accuseds before this Court on 21.01.2023 the custody order was recalled by this Court, but in the meantime the petitioners being the accuseds of the said Hare Street P.S. (DD/BFS) Case No. 290/2022 corresponding GR No. 1202/2022 remained in Judicial custody till 8th February, 2023 in the said other cases. The petitioners were granted bail in the said other case on 6th February, 2023, but release order was only granted on 8th February, 2023 and petitioners were released on bail.

So, from the bail prayer itself it is clear and admitted that the accused persons were released on bail on 08.02.2023 in connection with the Hare Street PS case. In the last part of the order of the Hon'ble Court dated 09.02.2023 it is mentioned that the Ld. Senior Advocate appearing for the accused persons submitted that they were not informed that on 07.02.2023 the accused persons were released on bail being granted by Ld. CMM, Calcutta and stated that the accused persons would appear before the Hon'ble Court on 09.02.2023.

It is also noted there that it has been informed to the Hon'ble Court that on that day i.e 09.02.2023 the accused persons were present before the Hon'ble Court. The Hon'ble Court directed the Prosecuting agency to take both the accused persons in custody and produce them before this Court.

The order No. 3 dated 09.02.2023 of this Court discloses that the accused persons were produced before this Court and that they were taken in custody by the ED as per the order of the Hon'ble Court in connection with CRR 263 of 2023 dated 09.02.2023. Accordingly, it is completely clear that the accused persons are in custody from that date.

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(4)

Hence, the calculation of days in custody is to be done on and from 09.02.2023. Today is the 56th day of their custody and the complaint is already filed and cognizance is taken. Therefore, the question of having statutory bail by the accused persons in connection with this case does not and cannot arise. They did not accrue the right of default bail under Section 167 (2) Cr.P.C. Thus, the prayer for bail under Section 167(2) Cr.P.C is completely misdirected if not misconceived.

It is worthy to mention here that by order dated 18.01.2023 accused persons were directed to be produced before this Court on 21.01.2023. On that day this Court recalled the order dated 18.01.202 and the Superintendent, Presidency Correctional Home was directed to release the accused persons if they are not wanted in any other case. The accused persons were not taken in custody by this Court on that day. It is apparent from the last part of order No. 2 dated 21.01.2023 that on that day for the purpose of statistical this case was ordered to be disposed of which was subsequently revived and restored on the strength of the order of the Hon'ble Court by order No. 03 dated 09.02.2023 of this Court.

Furthermore, for the sake of argument, if we accept that since the order dated 18.01.2023 the accused persons were in custody, in that case also it cannot be accepted that the said custody continued till this date since as per the admission in the bail petition, the accused persons were released on bail by the Court of Ld. CMM, Calcutta on 08.02. 2023. It is not disputed nor there is any scope to deny that the accused persons were taken into custody on 09.02.2023 at the Hon'ble High Court, Calcutta premises as per the direction of the Hon'ble Court. The Ld. Advocate for the accused persons did not apprise the fact that the accused persons were produced before this Court on 21.01.2023 but they were not taken into custody by this Court before their production on being arrested by the ED on 09.02.2023. Since the accused persons were not taken into custody by order dated 21.02.2023 of this Court, therefore, there remains no question of their detention being confirmed by the Hon'ble Court by order dated 25.01.2023.

In view of the discussion made above the prayer for bail for the accused person stands rejected. They are remanded to J/C till 15.05.2023. The judicial remand exceeding 14 days is allowed on being fortified with the observation of The Hon'ble High Court, Calcutta reported in 2019 SCC online Cal 1902.

Let a copy of this order be given to the I.O through the Ld. Spl. PP for ED.

D/C. by me.

Judge-in charge
Spl. CBI Court-1
Bichar Bhawan, Calcutta

Judge-in charge
Spl. CBI Court-1
Bichar Bhawan, Calcutta