

Directorate of Enforcement Vs. M/s. Sunstar Overseas Ltd. & Ors. (Rakesh Kumar Gulati's Application)

CNR No.: DLCT01-013456-2024

CC No.: 01/2024

ECIR No.: GNZO/09/2021

Under Sections: 3, 4, 70, 44, 45(1) PMLA Act, 2002

PS.: EOW

23.09.2024

Present: Mr. Simon Benjamin, Ld. SPP for ED.
Mr. Kush Gulati and Mr. Yash Datt, Ld. Counsel for the applicant/accused, Rakesh Kumar Gulati.

ORDER

1. By means of the present order, this Court shall determine the application, filed on behalf of/by the accused person, namely, Rakesh Kumar Gulati (*hereinafter referred to as the 'applicant/accused'*), seeking permission to place on record, applicant's retraction statement.

2. Learned Counsel for applicant outrightly submitted that the applicant was arrested in the present case/ECIR on 01.07.2024 and was remanded to the custody of ED for a period of 7 (seven) days, pursuant to the order dated 02.07.2024, passed by the Ld. Predecessor Judge. Subsequently, the applicant was remanded to judicial custody, which order has been extended from time to time. As per the Ld. Counsel, the applicant, immediately after having been remanded to judicial custody in the present case, had been endeavoring to file his retraction in this case, however, to no avail. As per the Ld. Counsel, the applicant was not permitted to carry any papers to the Court, by the jail/as well as lockup authorities. It was further submitted that the applicant further strove to place on record, his retraction statement/application through the jail superintendent, however, persistently failed in his said attempts. Accordingly, in order to

have the said statement placed on record of the Court, as per the Ld. Counsel, the applicant handed over his signed retraction application to his counsel during the course of legal *mulakat* on 05.08.2024 at Central Jail No. 7, Tihar Jail, Delhi, whereupon, the applicant's said retraction statement (***Annexure P-1*** of the instant application) is been entreated to be placed on record by means of the present application. Ld. Counsel, accordingly, prayed that the applicant's retraction statement may be taken on record in order to enable the present application to retract his inculpatory statement, which would, as per the Ld. Counsel, enable the applicant to ably defend himself in the present case.

3. *Per contra*, Ld. SPP for ED vehemently opposed the present application on the ground that the present application has been filed belatedly only to sabotage the ongoing investigation by leveling false and frivolous allegations against the official of ED without any corroborative evidence. As per Ld. SPP for ED, all the statement recorded by ED were recorded following a due procedure as per various judicial pronouncements and the said statement(s) were duly signed on each page as also, the applicant had testified his earlier statement(s) without force, undue influence or coercion. It was further submitted that all the said statements of the applicant were also confronted on various occasions with different key persons who were also summoned to reveal the truth and in token of their giving statement, they have also put their dated signatures on the relevant pages of the said statements. Even otherwise, as per Ld. SPP for ED, statements recorded under Sec. 50 of PMLA cannot be equated with the statements made before the concerned police officials. Further, as per Ld. SPP for ED, the applicant having done wrong, cannot take advantage of his own wrong or plead prejudice as a defence

to frustrate the lawful trial by competent authority. As per Ld. SPP for ED, the grant of prayer to retract applicant's statement on the ground of prejudice would directly and adversely affect the merits of ongoing investigation. Even otherwise, the handwritten application of the applicant is bereft of any substance on merits as well as factually incorrect. In this regard, it was further submitted that the applicant never brought to the notice of the concerned Court at any stage prior to moving the said application, even at the stage of his production during remand that it was subjected to any threat, undue influence or coercion. As per Ld. SPP for ED, the said allegations were not even pointed out after the applicant had limitation to meet with his counsel or his wife on 06.07.2024. Further, as per Ld. SPP for ED, the said allegations were not even leveled when the applicant's custody with ED, expired on 09.07.2024 and he was remanded to judicial custody. It was further submitted that the applicant's handwritten application is devoid of any specific date/incident, names and the desired narrative of ED officials demonstrating/explicating that the applicant was subjected to coerce or coercion as otherwise alleged. Further, it is also not stated in the application as to whether the applicant desires to retract his statement recorded post 01.07.2024 or any prior statements as well. Even otherwise, it was submitted that the application was not filed by the applicant through proper channel/mode. In support of the said contentions, reliance was placed upon the decisions in; *State of Bombay v. Kathi Kalu Oghad*, 1961 SCC OnLine SC 74; *Ashish Mittal v. Enforcement Directorate*, 2023 SCC OnLine Del 6678; *Vijay Madan Lal Choudhary v. Union of India*, 2022 SCC OnLine SC 929; *K.I. Pavunny v. Assistant Collector (HQ) Central Excise Collectorate*,

Cochin (1997) 3 SCC 721; and aK.T.M.S. Mohd. v. Union of India (1992) 3SCC 178.

4. The arguments of Ld. Counsel for applicant and that of Ld. SPP for ED, heard as well as case record(s) have been thoroughly perused.

5. In order to deal with the contentions raised by the Ld. Counsel for the applicant and that by the Ld. SPP for ED, this Court deems it pertinent to outrightly make a reference to the prayer clause of the present application, as under;

“...In light of the aforesaid facts and circumstances, it is most humbly prayed that this Hon’ble Court may kindly be pleased to;

i. Pass an order thereby taking the retraction dated 05.08.2024 of the Applicant Rakesh Kumar Gulati on record through his counsel; or

ii. Direct the jail authorities to allow the present applicant to carry his retraction along with him when is next produced before this Hon’ble Court;

iii. Pass any other order which this Hon’ble Court deems fit in the interest of justice...”

(Emphasis supplied)

6. Relevantly, it is observed from perusal of the above that the only entreaty made on behalf of the applicant by means of the present application is to take on record of the present case, his retraction statement dated 05.08.2024 or/in the alternate, to permit him to carry his retraction statement (directly) before this Court, when produced from judicial custody.

7. Undoubtedly, while the applicant in his retraction statement has asserted that his statement was recorded by the concerned officials at ED, while he was in custody, subjecting the applicant to “*force, threat and coercion*”. Further, it is also noted from the said retraction statement that the applicant has also asserted that the ED officials persistently, threatened him of dire consequences, in case he failed to tender his statement as per

their/said officials' narrative, besides the applicant was insistently put under threat of continued incarceration, arrest, harassment of his family members, etc. in case said statement was not proffered by the applicant. On the contrary, as aforementioned, Ld. SPP for ED has argued that the said allegations are unfounded on the part of the applicant, besides the retraction statement itself has been filed belatedly by the applicant herein. As aforenoted, it has further been vehemently contended by Ld. SPP for ED that the nature of statements tendered by Section 50 PMLA is quite distinct and disparate as the statements made by any other accused before police officials. In fact, while strenuously contending that since the statements under Section 50 PMLA are not akin to Section 161 Cr.P.C., and the proceedings under Section 50 PMLA deemed to be 'judicial' in nature, Ld. SPP for ED averred that the retraction of the applicant cannot be considered by this Court. However, this Court deems it pertinent to reiterate at this stage that means of the present application, no adjudication on the aspect of truth, veracity or correctness of the allegations/averments made in the applicant's retraction statement are sought/entreated before this Court. In fact, as aforenoted, by means of the present application merely a prayer for taking on record, applicant's retraction statement is made by/on behalf of the applicant. Ergo, the submissions made in the applicant's retraction statement, truth, correctness, or veracity thereof or the fact whether the statement tendered by the applicant before the concerned officials at ED, cannot be ascertained nor have they been pleaded on behalf of the applicant to be determined at the present stage. Needless to mention, the contention raised on behalf of the applicant as well as Ld. SPP for ED, as to the nature, truthfulness or veracity of the

applicant's statement recorded under Section 50 PMLA or the allegations made in the applicant's retraction statement as to the aspect of applicant being subjected to '*force, threat and coercion*', etc., can, in the considered opinion of this Court, only be tested and established/determined during the course of trial. Needless to further mention, Ld. SPP for ED has failed to produce on record, any case law, demonstrating that such statements cannot be even taken on record, notwithstanding the fact that the correctness, truth, veracity thereof has not been adjudicated at such a stage. Further, though this Court holds highest regards for the decisions, relied by Ld. SPP for ED, however, the same would not be applicable to the issue, raised before this Court, at this stage and can be evaluated only during trial.

8. In so far as the contention of the Ld. SPP for ED as to the manner of filing of the present application as well as retraction statement by the applicant is concerned, same too, is not of much significance, in the considered opinion of this Court, especially when the applicant has not denied his statement dated 05.08.2024, rather, vehemently sought the same to be placed on record of the present case. The same is further notwithstanding the fact that under prayer clause (ii) of the present applicant, it has been prayed in the alternate that the applicant may be directly permitted to carry his retraction statement before this Court, considering that he had not been permitted to do so on earlier occasion(s), despite his repeated endeavors. Even otherwise, the impact of delay, is any, in making such retraction statement, as contented by Ld. SPP for ED can be evaluated only during course of trial before this Court.

9. Accordingly, in light of the foregoing discussion, this Court is of the considered opinion that the ends of justice would be met if the applicant's instant application is ***allowed***. As a corollary, the applicant's retraction statement dated 05.08.2024, filed along with the instant application as well as the contentions raised therein by the applicant and the reply of ED to the allegations/averments made in the applicant's retraction statement as well as the arguments/contentions, raised by the applicant as well as that by Ld. SPP for ED are taken on record. Needless to reiterate the truth, veracity, correctness of the allegations/counter allegations or aspects of delay, if any, can be adjudicated only during the course of the day.

10. The application is, accordingly, ***disposed off*** in above terms.

11. A copy of this order be given ***dasti*** to Ld. Counsel for the applicant as well as Ld. SPP for ED.

12. **A copy of this order be also sent to the concerned Jail Superintendent with directions to hand over the same to the applicant.**

Abhishek Goyal
ASJ-03, Central District,
Tis Hazari Courts, Delhi
23.09.2024