

**IN THE COURT OF SH. RAKESH KUMAR-III,
SPECIAL JUDGE (PC ACT) (CBI-02),
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

**Complaint case no. 34/2022
FIR no. ECIR/DLZO-I/01/2019
PS Directorate of Enforcement
CNR no. DLCT11-000811-2022
ED Vs. M/s OPG Securities Pvt. Ltd.**

10.03.2023

This is an application U/s 439 Cr. P. C. r/w Section 88 of Cr. P. C. seeking grant of bail moved on behalf of applicant/accused no. 2 Sanjay Gupta.

Present: Sh. Hitesh, Ld. Proxy Counsel on behalf of Ld. Spl. PP for ED.
Sh. P. K. Dubey, Ld. Sr. Counsel assisted by Sh. Harshit Sethi, Ld. Counsel for the applicant/accused.
Applicant/accused Sanjay Gupta in person.

- :: O R D E R :: -

1. Vide this order, I shall dispose off the application U/s 439 Cr. P. C. r/w Section 88 of Cr. P. C. seeking grant of bail moved on behalf of applicant/accused no. 2 Sanjay Gupta.
2. It is stated in the application that applicant has not been arrested by the investigating agency/ED during the investigation and the present complaint has been filed on 22.12.2022 without his arrest. It is stated that applicant is voluntarily appearing before this court in terms of Section 88 Cr. p. c. upon being summoned vide cognizance order dt. 20.01.2023. It is stated that applicant has already been granted bail by this court by virtue of order dt. 18.10.2022 in the predicate/schedule offence case registered by CBI.
3. It is submitted that applicant is a Director of M/s OPG

Securities Pvt. Ltd. engaged in the business of stock market and is a member of National Stock Exchange of India, Bombay Stock Exchange and Metropolitan Stock Exchange of India and his company is operational for the last more than 27 years. It is stated that on the basis of some source information, CBI registered FIR RC.ACI.2018.A.0011 (Scheduled offence) U/s 120 B r/w Section 204 of IPC, Section 66 of Information Technology Act and Section 7, 12, and 13(2) r/w 13(1) (d) of PC Act, 1988 against M/s OPG Securities, Sanjay Gutpa, Aman Kokrady, Ajay Narottam Shah and unknown officers/officials of SEBI and NSE and other unknown persons.

4. It is further submitted that on 30.05.2018, CBI conducted search on the premises of the applicant and seized his passport and nothing incriminating was recovered during the search. It is stated that the applicant joined the investigation and cooperated in the same, however, he was arrested by the CBI.

5. It is submitted that while treating the offence U/s 120 B & 204 of IPC and Section 66 of IT Act 2000 along with Section 7, 12 & 13(2) r/w 13(1)(d) of PC Act 1988 in the above CBI FIR as a 'Scheduled Offences, the Complainant ED had registered ECIR/DLZO-1/01/2019 dated 24.01.2019 under Section 3 r/w Section 4 of PMLA.

6. It is submitted that during the course of the investigation, applicant Sh. Sanjay Gupta joined investigations on several occasions viz. 24.05.2019, 03.06.2019, 18.06.2019, 05.07.2019, 10.01.2020, 22.06.2020, 27.08.2020, 29.08.2020, 17.09.2020, 25.09.2020, 06.10.2020, 25.11.2020, 10.12.2020, 15.01.2021, 20.01.2021, 11.03.2021, 12.03.2021, 31.03.2021, 22.04.2022, 24.05.2022, 14.06.2022, 15.06.2022, 16.06.2022, 20.06.2022,

15.11.2022, 06.12.2022 and 07.12.2022 and fully cooperated in the same.

7. It is submitted that on 31.03.2021, a Provisional Attachment Order No.03/2021 was passed by the Complainant ED under the Second Proviso to Section 5(1) of PMLA and the properties belonging to the Applicant etc. were provisionally attached. The said order was challenged by the applicant before the Hon'ble High Court of Delhi vide 'W.P.(C) 13719 of 2021 titled as M/s OPG Securities Pvt. Ltd. and Ors. Vs Union of India And Ors', whereby the Hon'ble High Court of Delhi was pleased to issue notice and direct that "though the Adjudicating Authority would be free to pass a final order, the same would not be implemented without the leave of this Court."

8. It is further submitted that a final confirmation order dated 22.12.2021 was passed by the Adjudicating Authority under Section 8(3) of PMLA which has been challenged by the applicant before the Hon'ble Appellate Tribunal, PMLA in FPA-PMLA-4673/DLI/2022.

9. It is further stated that on 08.04.2022, searches under Section 17(1) of PMLA were carried out at the premises of the Applicant/Accused No. 2 & Accused No.1 M/s OPG and ED seized certain documents pertaining of income tax assessment proceedings of another Director Sh. Om Prakash Gupta for Financial years 2008 to 2011 alongwith certain hard disks and pendrives etc., however, no cash or any incriminating material etc. was recovered.

10. It is further submitted that statements of the Applicant were recorded u/s 50 of PMLA, 2002 Inter-alla on 24.05.2019, 03.06.2019, 18.06.2019. 10.01.2020, 15.01.2021, 20.01.2021,

11.03.2021, 12.03.2021, 31.03.2021 etc. and even after his release on bail in CBI's alleged scheduled offence case, applicant has appeared in ED office on 15.11.2022, 06.12.2022 and 07.12.2022 upon being summoned or telephonically called.

11. The applicant has prayed for bail on the grounds that he was always available and co-operated in the investigation and was not even arrested by the Investigating Agency / ED during investigations & the present Prosecution Complaint has been filed on 22.12.2022 without his arrest and he has appeared before this court on being summoned after taking cognizance. Reliance has been placed on the judgment of Hon'ble Supreme Court in **'Satender Kumar Antil Vs. CBI 2022 SCC OnLine SC 825'** & **'Siddharth v. State of U.P, (2022) 1 SCC 676'**. Ld. Counsel for the applicant/accused has also placed reliance on various orders passed by other similar courts, whereby bail was granted to the accused persons who were charge-sheeted without arrest. Reliance has also been placed on **Rana Kapoor vs. Directorate of Enforcement 2022, SCC OnLine Del 4065**, which is pending before this court.

12. It is stated that the investigation is complete and ED has already filed the complaint against the applicant and his company M/s OPG Securities Pvt. Ltd. (accused no. 1). It has also been contended that the applicant is suffering from various ailments including ischemic heart disease, myocardial infraction, enlarged liver, diabetes mellitus and hypertension etc., for which he requires constant monitoring and treatment from experts. The applicant has undertaken not to influence any witness or tamper with any evidence and to comply with the conditions imposed by this court. It is stated that the applicant qualifies the triple test as laid down by the Hon'ble Supreme Court and he is also not at flight risk as his

passport has already been seized by CBI. It is submitted that the trial is likely to take time and no fruitful purpose will be served by sending the applicant behind the bars.

13. Reply has been filed on behalf of ED whereby the present bail application has been strongly opposed. It is submitted that in view of the gravity of the offences, the “economic offences” form a class apart and need to be visited from a different approach at the time of granting bail. It is further stated that the Hon'ble Supreme Court has emphasized that the gravity of the offence and the role played by the applicant in an economic offence ought to be viewed with severity in matter concerning bail and it is trite law that the Court while granting bail has to keep in mind the nature of accusations, nature of evidence in support thereof, severity of the punishment, character of the applicant, peculiar circumstances, possibility of securing presence of the applicant and the reasonable apprehension of the witnesses being influenced.

14. Besides the above contention, respondent/ED has stressed upon the role of the applicant/accused in the offence involved, as described in the complaint to oppose the bail application.

15. In response to the grounds of bail, it is submitted on behalf of ED that the court has already taken cognizance of the offence against the applicant/accused, who was directly and actively involved in the offence of money laundering and there is sufficient evidence to substantiate the charge. It has further been contended that just because the applicant/accused has not been arrested during the course of investigation, does not entitle him to grant of outright bail by the court. Reliance has been placed on Pankaj Jain Vs. Union of India and Ors, Crl. Appeal no. 321 of 2018.

16. It is further contended that there exists every apprehension that in case the applicant/accused is admitted to bail, he would not only try to influence the witnesses but would also try to tamper with the prosecution evidence, which shall frustrate the legal proceedings. It is also submitted that if admitted to bail, the applicant/accused may flee and avoid trial.

17. It is submitted that the conditions specified under Section 45 of the PMLA Act are mandatory and need to be complied, even in respect of the application for bail moved U/s 439 Cr. P. C. It is stated that unless the contrary is proved, the court shall presume that the proceeds of crime are involved in money laundering and the burden to prove otherwise, lies on the applicant.

18. It has further been submitted that the offence involved in the present case is an economic offence and is grave in nature and the gravity of the offence can be judged by its impact on the society, economy, financial stability and integrity of the country. It is stated that it is well settled that economic offences in itself are considered to be gravest offences against the society as large and are therefore required to be treated differently in the matter of bail. Reliance has been placed on **State of Gujarat vs. Mohanlal Jitamalji Porwal AIR 1987 SC 1321, Y. S. Jagan Mohan Reddy vs. CBI 2013 7 SCC 439 and Anil Kumar Yadav vs. State (NCT of Delhi) 2018 12 SCC.**

19. Besides the above, in support of his contentions, Ld. Spl. PP for CBI has also relied upon the following judgments :-

1. **Vijay Madanlal Chaudhary and Ors. vs. Union of India & Ors. (SLP CrI) 4634/2014.**
2. **V. Hansprakash vs. State, (2021) 277 DLT**

173.

3. Sunil Dahiya vs. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 5566.

20. I have heard Sh. Pramod Kumar Dubey, Ld. Sr. Counsel, assisted by Sh. Harshit Sethi, Ld. Counsel(s) for the applicant/accused no. 2 and Sh. Nitesh Rana, Ld. Special PP for ED, assisted by Sh. Nikhl Kohli and Sh. Diwakar Chiramia, Advocates and have perused the record carefully.

21. Accused Sanjay Gupta has been charge-sheeted in this case without arrest. It is admitted position of ED that accused Sanjay Gupta has joined the investigation several times and it is also admitted position that applicant appeared before this court upon being summoned vide order dt. 20.01.2023. The applicant has already been granted bail by this court by virtue of order dt. 18.10.2022 in the predicate offence.

22. It is argued by Ld. Counsel for the applicant that when the accused is charge-sheeted without arrest, there can be no arrest at the instance of the court and the said law is also applicable even in cases pertaining to special Acts like NDPS, PMLA etc. To substantiate his arguments, Ld. counsel for the applicant has relied upon the judgment titled '**Satender Kumar Antil Vs. CBI 2022 SCC OnLine SC 825**' and the relevant findings of this judgment are as under :-

“65. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and

therefore, it is needless to say that the provisions of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a *pari materia* or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code.

23. Reliance can also be placed on the judgment of Hon'ble High Court of Punjab and Haryana in **Arun Sharma vs. Union of India and Ors., 2016, SCC OnLine P&H 5954**, wherein it has been held as under :-

"a) We have no hesitation in concurring with the above view already taken by the co-ordinate Division Bench of this Court in *Dalip Singh Mann v. Enforcement Directorate (supra)* that rigors of Section 45 (1) (ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorized officer under Section 19 of the PMLA before taking cognizance.

b) In other words, if any person though available was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Section 170 Cr.P.C., if upon issuance of process in

*a PMLA Complaint either by summons or warrant he appears before Court on his own volition, he would be entitled to bail forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody.
c) Section 45 (1) (ii) of PMLA has no application in case of a person not arrested under Section 19 of PMLA in such execution of bond for further appearance.”*

24. It is submitted that the above-stated matter was challenged before the Hon’ble Supreme Court in SLP (Crl.) no. 5978 of 2016 which was dismissed in limine vide order dt. 12.08.2016. The Hon’ble Punjab and Haryana High Court in the above-stated judgment has held that a person who was not arrested during investigation under PMLA nor produced in custody as envisaged in Section 170 Cr. P. C. and if upon issuance of process, he appeared in the court, he would be entitled to be released forthwith on furnishing his bonds with or without surety for further appearances without any incarceration in custody and it was also held that Section 45(1)(II) of PMLA would have no application in case of a person not arrested under Section 19 of PMLA.

25. Ld. Spl. PP has relied upon the judgment of Hon’ble Supreme Court in **Vijay Madanlal Chaudhary and Ors. vs. Union of India & Ors. (supra)** and argued that the rigors of Section 45 PMLA would apply to all kinds of proceedings for bail and Hon’ble Supreme Court has not exempted cases where accused is chargesheeted without arrest from applicability of twin condition. He argued that the judgment in Arun Sharma v. Union of India & Others (supra) would not be applicable in view of the judgment in

Vijay Madan Lal Choudhary and Others v. Union of India & Others (supra).

26. So far as the arguments of Ld. Spl. PP for ED regarding the applicability of twin condition on a person not arrested during investigation, is concerned, this court is not in agreement with the arguments advanced by Ld. Counsel for ED and the reason for the same is that in Vijay Madanlal Choudhary's case (supra), no issue was raised regarding the applicability of twin conditions of Section 45 of PMLA to those cases where accused was charge sheeted without arrest. Further, the ratio laid down by the Hon'ble Supreme Court of India in Satender Kumar Antil's case (supra) was neither referred to in the said judgment nor was discussed or distinguished. Therefore, in view of the above mentioned discussed points, the law laid down by the Hon'ble Supreme Court of India in Satender Kumar Antil's case (supra) is required to be followed. As per the findings of Hon'ble Supreme Court, for the applicability of twin conditions of Section 45 of PMLA for deciding the bail application, accused should be in custody of the investigating agency. If the investigating agency itself took a conscious decision that it was not a fit case to arrest accused during investigation, then simply on filing of the charge sheet before a court, accused cannot be taken into custody, by applying twin conditions of Section 45 of PMLA.

27. It is pertinent to note that when the order in Satender Kumar Antil (supra) was passed, the Hon'ble Supreme Court had taken the view that the twin conditions contained in Section 45 of PMLA stood struck down. It is argued Ld. PP for ED that in Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. (supra), the Hon'ble Supreme Court has held that the said conditions would be applicable and have to be considered in whatever form the relief is

sought. This contention of ED deserves to be rejected for the reason that Section 170 Cr.P.C. and applicability of twin conditions contained in Section 45 of PMLA to cases of accused persons charge sheeted without arrest was not an issue in *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* (supra).

28. As held in *Arun Sharma vs. Union of India and Ors.* (Supra), for the applicability of twin conditions of Section 45 of PMLA for deciding the bail applications, the accused should be in custody or there should be an apprehension of arrest. If the investigating agency itself did not exercise its powers under Section 19 of the PMLA and did not deem it fit to arrest a person, though available, during investigation, then merely because the complaint has been filed in the Court, the accused cannot be taken into custody by applying the twin conditions contained in Section 45 of the PMLA. It is pertinent to mention that the judgment in *Satender Kumar Antil v. Central Bureau of Investigation & another* (supra) was neither referred to in the judgment in *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* (supra) nor distinguished. The question of applicability of twin conditions contained in Section 45 PMLA to the case of a person not arrested during investigation was not directly in issue in *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* (supra) and therefore, the law laid down by the Hon'ble Supreme Court in *Satender Kumar Antil v. Central Bureau of Investigation & another* (supra) is applicable in the case in hand.

29. Further, it is not the case of prosecution that the applicant had not cooperated in the investigation or that he did not join the investigation as and when called. It is also submitted on behalf of ED that the possibility of tampering with the evidence and

influencing the witnesses cannot be ruled out seeing the influential position of the applicant, however, the applicant has not been arrested even during investigation so there is no merit in this contention and conditions can be imposed in that regard.

30. In view of the aforesaid detailed observations and the facts and circumstances of the case, having relied upon the law laid down by the Hon'ble Supreme Court in *Satender Kumar Antil v. Central Bureau of Investigation & another (supra)*, the fact that the applicant was not arrested by ED/prosecution during investigation and the complaint was filed without arresting the applicant and that nothing has been brought on record by ED to show that the applicant had not co-operated during investigation or had tried to influence any witnesses or tamper with the evidence and that the investigation qua him is complete, the bail application stands allowed.

31. Applicant/accused Sanjay Gupta is admitted to regular bail on furnishing personal bond in the sum of Rs.20,00,000/- (Twenty lakhs) with one surety of the like amount with further conditions as under:

- i. The applicant/accused shall not leave the country without prior permission of the Court;*
- ii. The applicant/accused shall surrender his passport before this court, if not surrendered yet, within 07 days;*
- iii. The applicant/accused shall co-operate and participate in the investigation as and when directed by the Investigating Officer;*
- iv. The applicant/accused shall not temper with the evidence and shall not influence the*

witnesses;

v. The applicant/accused shall provide his contact number to the Investigating Officer and shall keep the said mobile in operational modes so that the Investigating Officer as and when required can contact him.

32. The application stands disposed off accordingly.

33. Nothing expressed hereinabove shall have any bearing on the merits of the case.

Announced in the open court on
10.03.2023.

(Rakesh Kumar-III)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/10.03.2023