



**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE,
AHMEDABAD (RURAL)**

PMLA CASE No.2 of 2021

Directorate of Enforcement,
Government of India,

V E R S U S

Shri Rakesh Kumar Agarwal alias Bobby (Accused No.1).

Appearance:

Mr.A.R.Gupta, Learned Advocate for the Applicant/accused No.1.
Mr.S.V.Thakkar, Learned Special Public Prosecutor for The Complainant – E.D.

ORDER BELOW DISCHARGE APPLICATION- EXH.91

1. The applicant – accused no.1 – Shri Rakesh Kumar Agarwal alias Bobby has filed this application under Section 227 of the Criminal Procedure Code, 1973 (hereinafter referred as ‘Cr.P.C.’) seeking his discharge from PMLA Case No.2 of 2021.

2. Ld. Advocate Mr.A.R.Gupta appearing on behalf of the applicant – accused no.1 submits that no offence under the Money Laundering Act is being made out against the present applicant – accused. As per the prosecution case applicant – accused was the Managing Director of the Arbuda Credit Co-operative Society Ltd. (hereinafter referred as ‘ACCSL’) and Apni Credit Co-operative Society (hereinafter referred as ‘ACCS’) and the same were established as Multi State Cooperative Society with various

branches across State of Rajasthan and Gujarat which offers various financial schemes including fixed deposits and recurring deposits as per the norms prevailing in cooperative sector. The establishment of ACCSL was registered as per the cooperative society rules and regulations. As per the prosecution case ACCSL falsely represented itself as bank and collected deposits from investors and thereafter failed to return the deposits as assured and thereby, the offence has been committed. It is submitted that inability of credit society to repay the amount would not attract the provisions of Section 3 of PMLA nor it can be said that proceeds of crime and Money Laundering is involved in the present offence. He submits that in any case it can an offence under other statute but would not attract the provisions of money laundering. There is no evidence produced by the prosecuting agency i.e. ED to show that the proceeds of crime has taken place in the present offence. It is stated that the society faced financial difficulties due to demonetization which led to liquidity issues and there are number of cases in which the banking financial institutions have failed to repay the money due to financial crisis but that cannot be said that an offence under IPC or the Money Laundering Act are being committed. The evidence collected by the prosecution agency do not prima facie make out the case against the applicant – accused. It is stated that the PMLA Case is based on 21 different FIRs registered against the applicant – accused under IPC and GPID offences and even if the said FIRs are read it pertains to financial irregularities for which the offences are already registered whereby, the interest of depositors are protected.

2.1 It is submitted that the basic ingredients of offence under Section 3 of the PMLA do not made out nor there exists any proceeds of crime in the present case. The allegations of providing higher rate of interest and

promotional schemes are not substantiated in the evidence collected by the prosecuting agency. There are various contradictory statements which falsifies the allegations against the applicant – accused. The applicant – accused was merely looking for the routine business operations of cooperative society without having received any property or money from the alleged businesses of the cooperative society. It is submitted that none of the FIR registered against the applicant – accused have resulted into conviction and as per the decision of the Hon’ble Apex Court in the case of “**P. Chidambaram Vs. Directorate of Enforcement**” (2019) the PMLA proceedings cannot survive if the predicate offence is not proved. The say of the complainant – ED that Rs.17.05 Crores are proceeds of crime is without any basis that the said properties are actually the proceeds of crime or not. It is further submitted that the statement of applicant – accused under Section 50 of the PMLA cannot be believed to be true as the same are taken under force or coercion and such statement have no evidentiary value in the eye of law. It is stated that the Special Court while taking cognizance of the offence has mechanically accepted the prosecution’s claims without scrutiny and on this ground also the cognizance taken by the Court is illegal and erroneous and therefore, the applicant – accused should be discharged. Ld. Advocate for the applicant has reiterated the contentions stated in his discharge application and has urged to allow the present application by discharging the applicant – accused.

3. The present application is opposed by the opponent – Enforcement Directorate. Learned Special Public Prosecutor Mr.S.V.Thakkar has appeared on behalf of ED and submitted that after thorough investigation and collecting necessary evidence ED has filed complaint. It is stated that during the course of investigation statement of present applicant – accused and

other witnesses under Section 50 of the PMLA Act are recorded which merely establishes the money laundering and proceeds of crime. The present applicant – accused was managing all the affairs of the society and he used to withdraw the amount from the account of ACCSL under the guise of opening fake loan accounts and the money withdrawn from the bank has been utilized by the applicant – accused towards personal use and for purchasing the properties. The offence of money laundering was initiated on the basis of 21 FIRs which were filed against the present applicant – accused and other accused persons. The offences mentioned in the FIR includes GPID and IPC offences. As per the schedule annexed with the PMLA case, offences under IPC mentioned in the 21 FIRs and therefore, money laundering act clearly applies. It is stated that along with the complaint the details of the property attached which are proceeds of crime and the manner in which the funds are invested are mentioned which prima facie attracts the provision of Section 3 of the Money Laundering Act. Ld. Special Public Prosecutor has reiterated the details mentioned in the reply (Exh.94) and accordingly urged to reject the discharge application. In support of his arguments Ld. Special Public Prosecutor has relied on the following judgments;

- i. State of Maharashtra Vs. Som Nath Thapa & Ors (1996 AIR 1744).
- ii. State of Delhi Vs. Gyan Devi and Others [(2000) 8 SCC 239].
- iii. State of Orissa Vs. Debendra Nath Padhi [2005 (1) SCC 568].
- iv. Vijay Madanlal Choudhary Vs. Union of India 2022 SCC OnLine SC 929.

4. Heard the Ld. Advocates for the respective parties at length. The Court has gone through the discharge application, reply filed by the complainant - ED (Exh.94), judgments relied upon and case papers. It would be relevant to

quote Section 227 of Cr.PC and Section 3 of the PMLA for the ready reference.

"227 of Cr.P.C. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 3 of PMLA: Whosoever, directly or indirectly attempts to indulge or knowingly assist or knowingly is a part or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering."

5. It would also relevant to consider the principles laid down by the Hon'ble Apex Court in the matter titled as **Union of India Vs. Prafulla Kumar Samal & Ors** 1979 (3) SCC 4 wherein, the Hon'ble Apex Court had elaborately discussed the scope of Section 227 Cr.PC in para 7 and have summed up the principles while considering discharge application in para 10 as under:

"7. Section 227 of the Code runs thus:

"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are

suspicious circumstances against the accused so as to frame a charge against him.”

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

6. As per the prosecution case PMLA Case No.2 of 2021 is based on ECIR being ECIR No.05/AMZO/2017 dated 28/09/2017 filed against 12 accused persons. Applicant – accused – Shri Rakesh Kumar Agrawal alias Bobby is shown as Accused No.1 in the complaint. The PMLA Case is based upon 21 FIRs registered against the present applicant – accused and other accused persons for cheating the innocent people (who have invested their money in ACCSL) to the tune of Rs.32,70,24,505/- and as per the chargesheets total fraud / cheating was determined to the tune of Rs.34,54,87,953/-. The accused persons had floated various schemes under the name of M/s. Arbuda Credit Cooperative Society Limited (ACCSL)

which was registered as Multi State Society with Licence No. MSCS/CR/448/2011. Under the guise of said credit society, deposits were collected from the public by giving lucrative offers of higher interest rate on deposits and after collecting the deposits they have utilized the amount for their personal use and by purchasing properties in their relative's and known persons name.

7. Investigation carried out by the ED and statements of various witnesses and present applicant – accused under Section 50 of the PMLA Act, would prima facie reveals the involvement of the applicant – accused in the offence. The complaint filed by the ED after investigation (Page No.33 of the Complaint) would reveal the manner in which the proceeds of crime has travelled. The complaint states about the details of property purchased by the accused persons which is the specific say of the prosecution that these properties (i.e. properties mentioned in Table A at Para 7 Page No.34 of the complaint and mentioned in Table B at Para 7.2 at Page No.38 of the complaint) have been purchased from the proceeds of crime. It also prima facie reveals from the complaint and case papers that proceeds of crime to the tune of Rs.42,90,92,830/- were collected from the public under the pretext of higher returns on their deposits and thereafter, the said funds are diverted unauthorizedly to start some other business like Real Estate, Hotel and in acquiring of agencies TVS Bikes and Sonalika Tractors. The present applicant – accused is stated to be the Managing Director of M/s. ACCSL and he was the main key person and incharge of entire business activities and he is involved in the process and activities connected with acquisition, possession, concealment, use and projection of the proceeds of crime. It is settled position of law that, while considering the discharge application the Court has not to conduct mini trial and enter into arena of appreciation of

evidence, but has only to satisfy that whether the material collected by the prosecution is sufficient to put accused on trial. The Court has taken into consideration the nature of evidence collected by the prosecuting agency i.e. ED and have also taken into consideration the provisions of Section 3 of the PMLA Act and prima facie finds that there is sufficient evidence collected by the prosecution which is sufficient for trial.

8. In view of facts and circumstances noted hereinabove this Court is of the opinion that this is not a fit case where the applicant-accused no.1 can get discharge from the offences leveled against him as there is prima facie case against the applicant-accused no.1, hence, following final order is passed in the interest of justice:-

:-FINAL ORDER:-

- Present application below Exh.91 for discharge is hereby **rejected**.
- Matter is posted for framing of charge.

Pronounced and signed in the open court today.

Date :12/03/2025
Place:Ahmedabad

(Kamal M. Sojitra)
Principal District & Sessions Judge &
Designated Spl. Judge (PMLA),
Ahmedabad (Rural)
U.I.Code No.GJ01494

AVJ