



**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

Surendra Singh Ramnarayan Singh Gehlot (Accused No.8).

Appearance:

Mr.H.R.Panchal, Learned Advocate for the Applicant/accused No.8.

Mr.S.V.Thakkar, Learned Special Public Prosecutor for The Complainant – E.D.

ORDER BELOW DISCHARGE APPLICATION- EXH.93

1. The applicant – accused no.8 – Surendra Singh Ramnarayan Singh Gehlot has preferred 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.H.R.Panchal appearing on behalf of the applicant – accused no.8 submits that if the present case is perused it appears that the entire proceedings are initiated by the complainant – ED which mainly pertains to the FIRs registered at various police stations for the offences under Section 406, 409, 420, 468, 120(b) and 144 of IPC and Section 3 of the GPID Act and the chargesheets filed in connection therewith. All these complaints mainly relate to M/s Arbuda Cooperative Society Limited (hereinafter referred as ‘ACCSL’) and Apni Credit Co-operative Society (hereinafter referred as ‘ACCS’). It is further submitted that the applicant is

not in any way involved in any of the complaints or offences against ACCSL and ACCS. Accordingly, in the chargesheets filed the applicant is not shown as an accused nor any allegations or charges has been leveled against the applicant in connection with these FIRs before this Hon'ble Court or before any other Hon'ble Court of India nor any such proceedings are pending or in process. Nevertheless, in the related offences the applicant has been named as accused by the complainant which is tantamount to a clear abuse of process of law. On perusing the evidence adduced in the present case, the prosecution has failed to produce any clear and substantial evidence regarding the involvement of the applicant – accused no.8 in the alleged offence. However, in the related offences the applicant has been arraigned as an accused which is tantamount to a clear abuse of process of law.

2.1 It is further submitted that approximately 14 years ago on 03/10/2011 the applicant – accused had purchased one property and the same has been wrongly implicated in the present criminal proceedings and based on the coerced statements, the applicant has been shown as accused. It is submitted that the complaint is filed in the year 2017 whereas, the implicated property was purchased by the applicant six years prior in the year 2011. The prosecution has failed to produce any credible documentary evidence showing that the applicant has received any funds in connection with the alleged offence or had purchased the property. It is submitted that even after considering all the evidence, the complainant has failed to prove that the applicant – accused has prior knowledge or involvement in the alleged offence. No independent witness, evidence of conspiracy or knowing participation exists, even thereafter, the applicant is implicated as an accused. Lack of evidence to show involvement of applicant – accused and despite having no connection with the offence, the attempt to falsely implicate applicant – accused is misuse of process of law. 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 is a friend of accused no.1 – Shri Rakesh Kumar Agarwal and the present applicant – accused assisted accused no.1 by purchasing an immovable property at Rajasthan knowingly in his own name on behalf of accused no.1 - Shri Rakesh Kumar Agarwal to the tune of Rs.2,50,000/- from the money withdrawn in cash from the bank account of M/S ACCSL under the guise of bogus loan. The applicant – accused knowingly assisted in the activities connected with acquisition, possession and use and projection of the proceeds of crime as untainted and hence, he has committed the offence of money laundering. It is submitted that the mere fact that a person was not named in the FIR of predicate offence does not absolve him from liability under PMLA when evidence links him to money laundering activities. It is submitted that the applicant – accused in his statement recorded under 50 of the PMLA stated that property at Rajasthan was purchased by accused no.1 - Shri Rakesh Kumar Agarwal in his name for Rs.2,50,000/- from one Shri Yakub Khan and the said property though was purchased in the name of present applicant – accused, however, he had not made any payment for purchase of the property. It is further stated that by the applicant – accused in his statement that at the time of purchase of this property, accused no.1 - Shri Rakesh Kumar Agarwal informed the present applicant – accused that he would purchase the said property in his

name because it was offered to accused no.1 - Shri Rakesh Kumar Agarwal at higher price and therefore, present applicant – accused being close friend of accused no.1 - Shri Rakesh Kumar Agarwal knowingly and willfully signed the property documents for purchasing the same.

3.1 It is submitted that the amount collected by M/s ACCSL and its Managing Director – accused no.1 from the innocent investors is nothing but proceeds of crime as defined under Section 2 (1) (u) of PMLA generated directly as a result of criminal activities and thus, provisionally attached various immovable properties belongs to accused no.1 and others including present applicant – accused. Ld. Special Public Prosecutor has reiterated the details mentioned in the reply (Exh.97) 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.97), 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 Surendra Singh Gehlot is shown as Accused No.8 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 friend of Accused No.1 Shri Rakesh Kumar Agarwal and assisted him to purchase an immovable property in his name to the tune of Rs.2,50,000/- from the money withdrawn in cash from the bank account of M/s ACCSL under the guise of bogus loan. It reveals that applicant – accused knowingly assisted in activities connected with acquisition, possession and use and projection of the proceeds of crime. Ld. Advocate for the applicant - accused has raised contention to the effect that the applicant - accused is not an accused in schedule offence and therefore, he is not involved in proceeds of crime. Reliance is placed by Ld. Special Public Prosecutor on the decision in the case of **Vijay Madanlal Chaudhary (Supra)**. The Honble Apex Court in the case of **Pavana Dibbur vs Directorate of Enforcement, [2024] 0 AIR (SC) 117** in para 18 has very specifically held that if an accused in PMLA Case comes into picture after the schedule offence is committed by assisting in the concealment of proceeds of crime need not be an accused in schedule offence and such an accused can still be prosecuted under PMLA so long as the schedule offence exist and thereafter the contentions with regard to appellant of the said case not shown an accused in the chargesheet filed in the schedule offence was rejected. In view of the decision held by the Hon'ble Apex Court in **Vijay Madanlal Chaudhary (Supra) and Pavana Dibbur (Supra)** the

contentions raised by the applicant - accused do not find merits and the same is rejected. 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.8 can get discharge from the offences leveled against him as there is prima facie case against the applicant-accused no.8, hence, following final order is passed in the interest of justice:-

:-FINAL ORDER :-

- Present application below Exh.93 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