IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE, (SPE/CBI)-III, ERNAKULAM

Present :-

SRI.SHIBU THOMAS, SPECIAL JUDGE.

Tuesday the 20th day of February, 2024/ 01st Phalguna, 1945.

Crl. M.P. No. 201/2024

in

S.C.3/2023

Petitioner /Accused No.8 :	Subodh Jain, aged 65/2024, S/o. Late Sheetal Chand Jain, 46/3, (130/10), Civil Lines, Ajmer, Rajasthan-305001.
Represented By :	Advs. Deepu Thankan, Ummul Fida, Lakshmi Sreedhar, Lakshmi.P.Nair and Namitha.K.N.
Respondent/Complainant:	Director of Enforcement, Government of India, represented by its Assistant Director, Cochin Zonal Office, Kanoos Castle, A.K. Sheshadri Road (Mullassery Canal Road West), Cochin – 682001.
Represented By :	Adv. M. J. Santhosh, Special Public Prosecutor.

This petition coming on for hearing on 20.02.2024 in the presence of Counsels on both sides having stood over for consideration on the same day the Court passed the following:

ORDER

This bail application is filed by A8.

2. The prosecution case is that the first accused Rakesh Kumar Gargh, the then Chief Engineer (Naval Works), Military Engineer Service (MES), Kochi engaged in corrupt practices by demanding and collecting illegal gratifications equal to 1% of the tender value from the contractors for awarding various civil contracts at the Naval Base in Kochi. It is alleged that he received bribe not only directly from contractors, but also through 4th accused, Kanav Khanna and other intermediaries. Bribes were transferred through hawala routes and direct payments by private contractors. Initially, the illicit funds were concealed at the residence of 4th accused and later moved to the residence of his brother, one Sanjeev Kumar Agarwal. The CBI filed a charge sheet u/s. 173(2) of Cr.P.C on 29.06.2021 against several accused persons. During the investigation, Kanav Khanna and Sanjeev Khanna sought pardon in the case and have given statements u/s. 164 of Cr.P.C. During investigation, the CBI, Delhi Unit registered another FIR on 25.05.2022 against first accused for allegedly possessing disproportionate assets. It is brought out in investigation that the first accused allegedly possessing disproportionate

assets exceeding Rs.1,60,27,015.39 beyond his known source of income and to acquire property involved in money laundering and their act constitute the offence of money laundering u/s. 3 and punishable u/s. 4 of PML Act, 2002.

3. The case of the petitioner is that he is totally innocent of the offences alleged against him. He is prepared to execute bond with sufficient sureties and he is ready to abide any condition imposed by this Court. During argument, the learned counsel for the petitioner submitted that this petitioner was not arrested during investigation; he was available during investigation and has extended full co-operation with the investigation; there is no possibility of tampering of evidence or influencing witnesses or fleeing from justice since all evidences in this case are documentary in nature which cannot be tinkered by the accused/petitioner. It is further submitted that in compliance of the summons issued by this Court, he appeared and he is ready to furnish sufficient sureties to release him on bail. He is ready to co-operate with the further investigation if any and also to appear in this Court as and when directed. For these grounds, the petitioner prayed to release him on bail.

4. On the other hand, the learned Special Prosecutor appearing

for the complainant/respondent would oppose the said application by contending that he is not entitled to be released on bail in view of the twin conditions provided u/s. 45 of PMLA. It is further submitted that since there are serious allegations against the petitioner and the matter is pending for trial, he cannot be released on bail and prayed to dismiss the petition at this stage.

5. Heard both sides.

6. I have gone through the records and heard elaborately. There are indeed serious allegations against the petitioner. However, in this case, Principal District Court took cognizance on the complaint submitted by the complainant/respondent, and made over to this Court and the matter is pending for trial. The petitioner was not arrested during the investigation of PMLA case. The complainant does not have a case against him that the petitioner neither participated in nor co-operated with the investigation. The investigating officer even after filing the complaint, did not apply for the custody of the petitioner. The statement of the petitioner u/s. 50 of PML Act was recorded at several times. The learned counsel for the petitioner submitted that as such the petitioner is not required to pass the test of Sec. 45 of PML Act at this stage and it is only

applicable in a case where the petitioner filed a petition either u/s. 439 of the Code after arrest during investigation or u/s.438 of Code apprehending his arrest during investigation. It is an admitted case of the complainant that the applicant was not arrested during investigation. This application is made while the petitioner appeared before Court on summons.

7. In Rana Kapoor’s case, the Hon’ble High Court of Delhi considered similar facts, Sec.170 of Cr.P.C and sec.45 of PML Act as well as the Judgment of the Hon’ble Supreme Court in Satinder Kumar Antil’s case and granted bail to the petitioners of that case. It is pertinent to note in the case on hand that no attempt was made by the complainant to arrest the petitioners during the investigation stage and no petition is filed in this Court seeking custody of any of them. Bearing in mind the principles laid down in Satinder Kumar Antil's case and Rana Kapoor's case, I am of the view that the restrictions in Sec. 45 of PML Act is not a ground to reject the bail application filed by the petitioner at this stage. The learned Prosecutor argued that investigation into the embezzled amount by the petitioner is still ongoing and presence of accused is indispensable for the purpose of interrogation and confrontation and there is chance of tampering the evidence. The apprehension of the prosecution can be

alleviated by imposing conditions for which petitioner is willing, ready and amenable. Therefore, the petition is allowed and petitioner is released on bail with following conditions:-

1. Petitioner shall execute bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like amount.

2. Petitioner shall not leave the country without prior permission of the Court.

3. He shall produce his original passport within two weeks. If he is not in possession of passport, file an affidavit to that effect.

4. He shall co-operate with the investigating agency.

5. He shall appear before the Investigating Officer as and when required till completion of the investigation into the embezzled amount by accused.

6. He shall not influence, intimidate any of the witnesses and shall not interfere with the trial of this case.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 20th day of February, 2024.

Sd/-
Shibu Thomas
Special Judge, (SPE/CBI) – III
Ernakulam

<u>Appendix</u>: Nil.

Id/-
Special Judge, (SPE/CBI) – III

Typed by:-
Compd by:-