

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.M. (SB) 207 of 2023

**Santanu Banerjee
v/s.**

Enforcement Directorate

For the Petitioner:

Mr. Debasish Roy, Adv,
Mr. Avik Ghatak, Adv.
Mr.Saibal Kr Dasgupta, Adv.

For the Enforcement Directorate:

Mr. Phiroze Edulji, Adv.,
Ms. Anamika Pandey, Adv.

Judgment delivered on:

26-11-2024

SUVRA GHOSH, J. :-

1) Pursuant to an order passed by a Co-ordinate Bench of this Court in W.P.A. 9979 of 2022 on 8th June, 2022, FIR was lodged under sections 7/7A/8 of The Prevention of Corruption Act, 1988 read with sections 120B/420/467/468/471/34 of the Indian Penal Code against one Chandal Mondal @ Ranjan Mondal and other unknown persons. In course of investigation it was revealed that in the Teachers Eligibility Test (TET-2014) conducted by the West Bengal Board of Primary Education, the accused persons therein were involved in illegal appointment of ineligible candidates in lieu of extraneous consideration. Enforcement Case Information Report (ECIR) was registered under section 4 of The

Prevention of Money Laundering Act, 2002 (hereinafter referred to as the Act of 2002) on 24th June, 2022. Prosecution complaint under section 44 read with section 45 of the Act of 2002 was filed on 19th September, 2022 against eight accused persons. The first supplementary prosecution complaint was filed on 7th December, 2022 adding six new accused besides the earlier eight persons. Search was conducted at the petitioner's residential premises on 20th January, 2023, 25th January, 2023, 26th January, 2023 and 27th January, 2023 and the petitioner was called for interrogation by the Enforcement Directorate (in short the E.D.) on 10th March, 2023 and was arrested on the same date. The second supplementary complaint was filed on 21st March, 2023. The petitioner was named in the third supplementary complaint filed on 8th May, 2023. Charge sheet was submitted in connection with the predicate offence on 18th May, 2023 and provisional attachment order issued on 13th July, 2023. The fourth supplementary complaint was filed on 28th July, 2023.

2) Seeking bail of the petitioner, learned counsel for the petitioner has canvassed his argument as hereunder:-

The petitioner is in custody since 10th March, 2023 and investigation is still going on against twenty-five accused persons including the petitioner. The E.D. has cited 167 witnesses, 182 statements and 210 documents which are required to be examined by the learned Trial Court.

3) The petitioner has not been arraigned as an accused in the predicate offence either in the First Information Report, or in the charge sheet and supplementary charge sheet submitted by the CBI. Despite a direction

given by an Hon'ble Division Bench of this Court in M.A.T. 1961 of 2023 and 1960 of 2023 on 5th October, 2023 directing the investigating agency to conclude investigation within a stipulated time frame, investigation is still going on and a fifth supplementary complaint is scheduled to be filed.

- 4) On searching the petitioner's house, list of non-recommended candidates was found. It is stated in the fourth complaint that Sujoy Krishna Bhadra gave Rs. 40,00,000/- to the petitioner for purchasing a flat in a building which was under construction. The complaint records that statement of one Tapas Kumar Mondal was recorded under section 50 of the 2002 Act wherein he stated that he paid an amount of more than Rs. 19 crores to Kuntal Ghosh on instruction of the petitioner for the purpose of illegal appointment of candidates as teachers. The statement also records that Tapas Kumar Mondal met the petitioner at the residence of Kuntal Ghosh to discuss the matter of regularisation of the organized primary teachers. Kuntal Ghosh stated before the E.D. that he paid an amount of more than Rs. 1 crore in cash to the petitioner for the purpose which was collected by him through Tapas Kumar Mondal. The complaint also states that the petitioner was examined under section 50 of the Act and was unable to provide the source of the properties purchased by him in the name of his wife as well as firms/companies. He appears to be an employee of the W.B.S.E.D.C.L. and earns around Rs. 2 to 6 lakhs per annum. The property amassed by him is not commensurate with his income profile. The allegation against him is that he indulged in the offence of money laundering by way of generating the proceeds of crime.

- 5) Even if the petitioner owns huge disproportionate wealth, it does not amount to money laundering. Tapas Kumar Mondal who stands on a graver footing than the petitioner has been granted bail by the E.D. No allegation was levelled against the petitioner by Tapas Kumar Mondal or Kuntal Ghosh in the CBI case though both the cases arose out of the same alleged offences/incidents. There is no proof of any money trail to substantiate that the petitioner is the recipient of any amount as alleged.
- 6) The petitioner was appointed to the post of Vice-President of West Bengal Pradesh Trinamool Youth Congress in August 2020 and as Karmadakshya of Hooghly Zilla Parishad in 2018, i.e., much after the period when the scheduled offence pertaining to TET-2014 could have been committed. TET-2014 examination was held on 11th October, 2015 and results were declared on 14th September, 2016. Therefore the petitioner was not an influential person at the relevant time.
- 7) Though in his statement before the E.D. the petitioner has accepted that he gave details of the admit card of one Rahul Dev Ghosh to Kuntal Ghosh and the said candidate was selected for the post of primary teacher, the petitioner also gave the details of his wife and sister-in-law who were not selected. Much emphasis has been laid by the E.D. on the statement of one Gunadhar Khanra who has not been named as an accused or cited as a witness in the complaint. Therefore his statement does not merit consideration. There is also no independent material to prove that the petitioner has any nexus whatsoever with the prime accused persons of the case. In course of investigation of the offence of money laundering, it is beyond the domain of the E.D. to hold that

predicate offences were in fact committed. Since the CBI has no allegation against the petitioner, the E.D. cannot claim that the petitioner is guilty of generation of proceeds of crime in connection with the predicate offence. The amount received from Sujoy Krishna Bhadra to the tune of Rs. 40,00,000/- was an advance for booking a flat which was to be constructed by D.I.P. developers, a firm under indirect control of the petitioner. The entire allegation against the petitioner stands on the statements of co-accused Kuntal Ghosh and Tapas Kumar Mondal which cannot be safely relied upon. The petitioner stands on a much better footing than Tapas Kumar Mondal who is on bail. The petitioner seeks bail on merit as well as on the ground of prolonged incarceration.

8) Learned counsel for the petitioner has placed reliance on the following authorities in support of his contention:-

1. Dr. lakhwinder Singh v/s. Directorate of Enforcement, Government of India reported in 2022 SCC OnLine HP 6166
2. Manish Sisodia v/s. Central Bureau of Investigation reported in 2023 SCC OnLine SC 1393
3. Prakash Industries Ltd. v/s. Union of India and Anr. reported in (2023) 1 High Court Cases (Del) 399
4. Vijay Madanlal Choudhary & Ors. v/s. Union of India & Ors. reported in 2022 SCC OnLine SC 929
5. Pankaj Bansal v/s. Union of India & Ors. reported in 2023 SCC OnLine SC 1244
6. Santosh v/s. State of Maharashtra reported in (2017) 9 Supreme Court Cases 714

7. S Martin v/s. Directorate of Enforcement reported in Special Leave to Appeal (Crl.) No. 4768/2024
8. M/S Bharathi Cement Corporation Private Limited v/s. The Directorate of Enforcement & Ors. reported in Criminal Revision Case No. 87 of 2021
9. Sanjay Jain v/s. Enforcement Directorate reported in 2024 SCC OnLine Del 1656
10. Chandra Prakash Khandelwal v/s. Directorate Enforcement reported in 2023 SCC OnLine Del 1094
11. Ajay Kumar Chandraprakash Baheti v/s. Directorate of Enforcement reported in 2022 SCC OnLine Bom 1451
12. P. Chidambaram v/s. Directorate of Enforcement (2020) 13 Supreme Court Cases 791
13. Vijay Agrawal v/s. Directorate of Enforcement reported in (2023) 2 High Court Cases (Del) 651
14. Manish Sisodia v/s. Directorate of Enforcement reported in 2024 SCC OnLine SC 1920
15. Manik Bhattacharya v/s. Enforcement Directorate reported in C.R.M (SB) 72 of 2024
16. Prem Prakash v/s. State (NCT of Delhi) reported in 2024 SCC OnLine SC 2270
17. Ramkripal Meena v/s. Director of Enforcement reported in Special Leave to Appeal (Crl.) No (s). 3205/2024
18. Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v/s. State of Uttar Pradesh reported in 2024 SCC OnLine SC 1755

19. Javed Gulam Nabi Shaikh v/s. State of Maharashtra and Another reported in 2024 SCC OnLine SC 1693
20. Vijay Nair v/s. Directorate of Enforcement reported in Special Leave Petition (Criminal) Diary No (s.) 22137/2024
21. Kalvakuntla Kavitha v/s. Directorate of Enforcement reported in 2024 SCC OnLine SC 2269.

9) Speaking for the E.D. and vehemently opposing the prayer, learned counsel has submitted that the petitioner being the former Vice-President of the ruling party and an employee of W.B.S.E.D.C.L is an influential person who is in a position to intimidate witnesses and tamper with evidence. Referring to statement of witnesses under section 50 of the Act of 2002, learned counsel has submitted that huge amount of money was paid by Tapas Kumar Mondal and Kuntal Ghosh on instruction of the petitioner who played an active role in the illegal appointments. Immovable property worth Rs. 1,08,76,840/- and movable property/bank deposits worth Rs. 47,94,610.32/- were recovered from the petitioner. Upon conducting search in the residential premises of the petitioner, several incriminating documents and digital evidence including a handwritten list of 26 aspiring candidates of TET-2014 and upper primary and a list of 346 candidates with TET roll numbers from different districts of West Bengal were recovered and seized. Statement of the petitioner recorded under section 50 of the 2002 Act reveals that these documents were received in his office from the family members of the candidates seeking illegal appointments. Proceeds of crime have been accumulated by the petitioner from candidates who were recommended for

appointment and also from those who were not recommended despite shelling out substantial amount of money. The property accumulated by the petitioner and his family members is not commensurate with his income profile. The petitioner has indulged in the offence of money laundering by generating proceeds of crime upon arranging for appointment of ineligible candidates. Several companies were registered by the petitioner in the name of his wife for laundering of funds which were operated by the petitioner himself. A whatsapp chat sent to the petitioner indicates that the sender demanded an amount of Rs. 1,39,00,000/- given to him in advance for appointment of relatives of the sender through TET-2014. It was revealed during investigation that the phone belonged to Gunadhar Khanra who has admitted payment of the said amount in his statement recorded under section 50 of the 2002 Act.

10) Referring to section 24 of the Act, learned counsel has submitted that in the present proceeding relating to proceeds of crime under this Act, it may be presumed that the proceeds of crime are involved in money laundering unless the contrary is proved. The petitioner having failed to prove the contrary, it can be concluded that the petitioner is guilty of the offence of money laundering. In view of the restrictions laid down under section 45 of the Act, the petitioner is not entitled to be released on bail.

11) Learned counsel has referred to the following authorities in support of his contention.

1. Maru Ram Etc. vs. Union of India & Anr reported in 1981 SCR (1)1196.

2. Karan Singh vs. State of Haryana & Anr reported in 2013 (12) SCC 529.
3. Satyendar Kumar Jain vs. Enforcement Directorate reported in 2024 SCC OnLine SC 317.
4. Partha Chatterjee vs. Enforcement Directorate [CRM (SB) 180 of 2023].
5. Kuntal Ghosh vs. C.B.I. [C.R.M (DB) 681 of 2024].
6. Manish Sisodia vs. C.B.I reported in 2023 SCC OnLine SC 1393.
7. Tarun Kumar vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1486.
8. Vijay Madanlal Choudhary vs. Union of India reported in 2022 SCC OnLine SC 929.
9. State of Gujarat vs. Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364.
10. Y.S Jagan Mohan Reddy vs. C.B.I reported in (2013) 7 SCC 439.
11. Nimmagadda Prasad vs. C.B.I reported in (2013) 7 SCC 466.
12. Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act) reported in (2015) 16 SCC 1.
13. State of Bihar vs. Amit Kumar reported in (2017) 13 SCC 751.
14. Anil Kumar Yadav vs. State (NCT of Delhi) reported in (2018) 12 SCC 129.
15. Tofan Singh vs. State of T.N. reported in (2021) 4 SCC 1.

16. Subires Bhattacharyya vs. C.B.I. reported in 2022 SCC OnLine Cal 4307.
 17. Anubrata Mondal vs. C.B.I, reported in 2023 SCC OnLine Cal 23.
 18. Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra reported in (2005) 5 SCC 294.
 19. Union of India vs. Varinder Singh reported in (2018) 15 SCC 248.
 20. Directorate of Enforcement vs. Aditya Tripathi reported in 2023 SCC OnLine SC 619.
 21. Saumya Chaurasia vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1674.
 22. Pavana Dibbur vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1586.
- 12) In reply, learned counsel for the petitioner has submitted that though the statement of Gunadhar Khanra has been relied upon heavily, he has not been impleaded either as an accused or as a witness and as such, his statement does not merit any consideration. No material has transpired during investigation to substantiate the statements recorded under section 50 of the Act. Allegations against the petitioner are primarily based on statements of co-accused persons which are not admissible in evidence.
- 13) I have considered the rival submission of the parties and material on record.
- 14) The twin conditions laid down under section 45 of the Act which are required to be satisfied by the petitioner for grant of bail are as follows:-

- (i) The public prosecutor should be given an opportunity to oppose the application for release and ;
- (ii) The Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

15) Learned counsel for the petitioner has pointed out that the petitioner was not arraigned as an accused in the predicate offence. The Hon'ble Supreme Court, in the authority in Vijay Madanlal Choudhary and Another (supra) has held that "the offence under section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum." Since the petitioner is admittedly not an accused in the predicate offence, his further detention in the present case is not warranted.

16) The factors which are to be borne in mind while considering an application for bail as laid down by the Hon'ble Supreme Court in the authority in Prosanta Kumar Sarkar v/s. Ashis Chatterjee and Another reported in (2010) 14 Supreme Court Cases 496 are as hereunder:-

- i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

- ii) *nature and gravity of the accusation;*
- iii) *severity of the punishment in the event of conviction;*
- iv) *danger of the accused absconding or fleeing, if released on bail;*
- v) *character, behaviour, means, position and standing of the accused;*
- vi) *likelihood of the offence being repeated;*
- vii) *reasonable apprehension of the witnesses being influenced;*
and
- viii) *danger, of course, of justice being thwarted by grant of bail.*

17) The Hon'ble Supreme Court, in the authority in Vijay Madanlal Choudhary (supra) has held as follows:-

“388. ... The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.” (emphasis supplied)

18) Whether seizure of incriminating articles/documents from the petitioner's house and property, both movable and immovable, worth crores of rupees allegedly acquired by the petitioner discloses an unbroken money trail, i.e., generation of proceeds of crime which eventually leads to the petitioner shall be decided in trial.

19) Section 24 of the Act of 2002 calls for a presumption that proceeds of crime in any proceeding relating thereto are involved in money laundering unless the contrary is proved by the person charged with offence. Such presumption comes into play only when the E.D. establishes three foundational facts:-

(i) that a criminal activity relating to a scheduled offence has been committed;

(ii) that the property in question has been derived or obtained directly or indirectly, by any person as a result of such criminal activity; and

(iii) that the person concerned is directly or indirectly involved in any process or activity connected with the said property which constitutes proceeds of crime.

Therefore it is for the E.D. to establish these foundational facts after which the onus shifts upon the petitioner to rebut the presumption under section 24.

20) The allegations primarily rest on the statement of the co-accused recorded under section 50 of the Act, the truth and veracity of which need to be weighed during trial. The material collected by the E.D. prima facie suggests that the petitioner was allegedly in liason with Manik

Bhattacharyya and Kuntal Ghosh who were actively involved in the offence. Both of them have been granted bail by this Court. The petitioner is similarly circumstanced.

- 21) With regard to prolonged incarceration of the petitioner and delay in trial, the petitioner has submitted that he is in custody since 10th March, 2023, i.e., for about twenty months.
- 22) Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 as it stands after amendment of section 436A of the Code of Criminal Procedure spells out that the first time offender (who has never been convicted for any offence in the past) shall be released on bond by the Court if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. The Hon'ble Supreme Court, in the order passed on 23rd August, 2024 in writ petition (Civil) no. 406 of 2013 has made the amended provision applicable to all under-trials in pending cases irrespective of whether the case was registered against them before 1st July, 2024 when the new legislation came into effect.
- 23) In the judgment in Manish Sisodia (supra), the Hon'ble Supreme Court has held that the right to bail in cases of delay coupled with incarceration for a long period should be read into section 439 of The Code of Criminal Procedure and section 45 of the 2002 Act. The Hon'ble Court has referred to the authority in Javed Gulam Nabi Shaikh v/s. State of Maharashtra and another reported in 2024 Supreme Court Cases OnLine SC 1693 wherein the Hon'ble Court has dealt with the law laid down in the judgments in Gudikanti Narasimhulu and others v/s. Public Prosecutor,

High Court of Andhra Pradesh reported in (1978) 1 Supreme Court Cases 240, Shri Gurbaksh Singh Sibbia and Others v/s. State of Punjab reported in (1980) 2 Supreme Court Cases 565, Hussainara Khatoon and Others (I) v/s. Home Secretary, State of Bihar reported in (1980) 1 Supreme Court Cases 81, Union of India v/s. K.A. Najeeb reported in (2021) 3 Supreme Court Cases 713 and Satender Kumar Antil v/s. Central Bureau of Investigation and Another reported in (2022) 10 Supreme Court Cases 51 and observed as follows:-

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.” The Hon’ble Court has also observed that the principle bail is a rule and refusal is an exception is, at times, followed in breach and it is high time that the trial Courts and the High Courts should recognize the principle that bail is rule and jail is exception.

24) The Hon’ble Supreme Court has time and again held that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial and in such a case Article 21 applies irrespective of the seriousness of the crime. The right to life and personal liberty enshrined under Article 21 of the Constitution is overarching and sacrosanct. A constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory

provisions in a penal statute if it finds that the right of the accused-under trial under Article 21 of the Constitution has been infringed. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional Court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part.

- 25) With regard to the apprehension that the petitioner shall influence witnesses or may abscond if released on bail, stringent conditions may be imposed upon him to address the concern.
- 26) Section 4 of the Act of the 2002 provides for rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also fine. According to the E.D., investigation qua the petitioner is complete but charge is yet to be framed.
- 27) The petitioner cannot be held entirely responsible for the delay in trial. The case involves 182 statements, 210 documents and 167 witnesses to be examined in order to substantiate the charges levelled against twenty-five accused persons including the petitioner. There is remote chance of conclusion of trial in near future. Since the case primarily depends on documentary evidence which is in custody of the E.D., there is no scope for the petitioner to tamper with the same. The petitioner is little short of completing one-third of the maximum period of imprisonment laid down under section 479 of the 2023 Act.
- 28) It is not in dispute that he is a first-time offender and has not been convicted of any offence earlier. Keeping in view the voluminous evidence to be considered by the learned Trial Court, chance of conclusion of trial within the time frame for incarceration during trial laid down in section

479 is bleak. Rejecting the prayer of the petitioner at this stage and granting him liberty to renew his prayer upon completion of the said time frame shall serve no purpose at all. Article 21 of the Constitution and section 479 of the 2023 Act read in harmony speak in favour of grant of bail to the petitioner on the ground of prolonged detention without trial as well as delay in trial.

29) In view of the above, this Court is inclined to release the petitioner on bail subject to stringent conditions.

30) Accordingly, the application for bail being C.R.M. (S.B) 207 of 2023 is allowed.

31) The petitioner be released on bail upon furnishing bond of Rs. 10,00,000/- (Rupees Ten lakhs) with adequate sureties, half of whom should be local, subject to the following conditions:-

- a. The petitioner shall surrender his passport with the learned trial Court at once.
- b. He shall not leave the territorial jurisdiction of the learned trial Court without leave of the trial Court.
- c. He shall appear before the learned trial Court on every date of hearing fixed before the learned Court.
- d. He shall not tamper with evidence or intimidate witnesses in any manner whatsoever.
- e. He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

f. He shall provide his mobile number before the learned trial Court and shall not change the said number without prior intimation to the Court.

32) In the event the petitioner violates any of the bail conditions as stated above, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

33) It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall deal with the matter independently in accordance with law without being influenced by any observation which may have been made in this judgment.

34) All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

35) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)