

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 12350 of 2022**

Prem Prakash Petitioner
Versus
Union of India through the Directorate of Enforcement, represented by its
Assistant Director (PMLA) Opp. Party

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. Vikash Pahwa, Advocate
Mr. Indrajit Sinha, Advocate
Mr. Prabhav Ralli, Advocate
For the E.D. : Mr. Anil Kumar, A.S.G.I.
Mr. Rishabh Dubey, A.C. to A.S.G.I.

Order No.04 Dated : 10.01.2023

Heard both the sides.

The petitioner- Prem Prakash is in custody in connection with ECIR Case No. 04 of 2022 in ECIR/RNZO/03/2002 arising out of Barharwa P.S. Case No.85 of 2020 for the offence registered under Sections 147, 149, 341, 342, 323, 379, 504, 506 read with Section 120B of the Indian Penal Code, Section 3 read with Section 70 of Prevention of Money Laundering Act, 2002 and punishable under Section 4 of Prevention of Money Laundering Act, 2002 pending in the Court of Shri Prabhat Kumar Sharma, learned Special Judge, PML Act, Ranchi or his successor. The petitioner was remanded in this case on 18.08.2022 from Special Case No.03/2022 instituted at Kolkata and since 25.08.2022 the accused is in judicial custody in connection of this case.

PROSECUTION CASE

2. The prosecution story reminds one of a crime thriller, where the State withers and the crime cartels with political connection, clash for natural resources of the State. At the center of this human rapacity is Rajmahal Hills which runs through the Districts of Sahibganj, Pakur and extending up to Dumka, and is famed for the black stone chips used as construction material.
3. Enforcement Case Information Report (ECIR) No.03/2022 was recorded on 08.03.2022 on the basis of the FIR bearing No.85/2020 dated 22.06.2020, lodged by Barharwa Police Station, Sahibganj District, Jharkhand under Sections 147/149/341/342/323/379/120B/504/506 of IPC, 1860, against Tapan Singh and 10 other named and other unknown persons.
4. Complaint of one Sambhu Nandan Kumar is the basis of the instant FIR and as per the prosecution case, he was threatened and obstructed on

22.06.2020 by the persons accused in the FIR, to participate in tender for Barharwa Toll. It is alleged that he was asked by Pankaj Mishra over phone, not to participate in the tender, on refusal of which, he was attacked by mob, at his behest. At the root of the attempt to oust the informant from participating in the tender process for Barharwa Toll was attempt to control this toll which held the key to gain control over the 6 tolls which came under this Nagar Panchayat. These 6 tolls under Barharwa Nagar Panchayat Toll fell in route connecting the mining sites and the main roads from where the mined items were transported to destined places. The investigation disclosed that the vehicles carrying the mined items (Mainly stone chips) had to cross Barharwa Toll before reaching main roads. A huge volume of mining was being carried out illegally in Sahibganj District and adjoining areas.

5. Investigation also revealed that the accused Pankaj Mishra was also involved in illegal collection of levies from the trucks carrying stone chips through his accomplices, including accused Bachhu Yadav. During investigation, it came to light that Pankaj Mishra had been using his influence and dominance to control mining businesses as well as inland ferry services in Sahibganj and its adjoining areas. He had control over the mining of stone chips and boulders as well as installation and operations of several crushers, set up across various mining sites in Sahibganj. He himself had been allotted Mining lease in Sahibganj in the name of his proprietorship firm Mahakal Stone Works at Mouza- Gilamari, Rajmahal Sub Division, District Sahibganj, Jharkhand. He carried out illegal mining extensively at several sites through his accomplices. He had also forcibly occupied Mundali stone deposit from one Sahibganj based businessman-Vinod Kumar Jaiswal and was conducting illegal mining on the said stone deposits. He had a fixed share in almost all the mines and transportation carried out by several persons including his associates.

6. Pankaj Mishra enjoyed political clout, being the representative of the present Chief Minister, Jharkhand, who was also M.L.A. from Barhait, Sahibganj. The investigation into the bank accounts of the accused, Pankaj Mishra revealed acquisition of proceeds of crime running into Crores of Rupees. The proceeds of crime out of the illegal mining was generated in cash and was also being transferred to Prem Prakash(Accused No.3) who was hand in glove with Pankaj Mishra (Accused No.1) and others who were involved in illegal mining and its transportation activities as well as in the activities related to Money Laundering. The accused persons had huge transactions running into

Crores of Rupees with his associates, involved in illegal mining and transportation of stone chips. Prem Prakash (Accused No.3) acquired proceeds of crime and had laundered the funds of his associates and had also used them for personal gains. Accused No.3 was in receipt of huge cash as well as funds through banking channels which have been generated and acquired out of mining activities. Further, the accused person had also been exerting his political proximity and his clouts for illegal activities and extraneous purposes and has been influencing the administration too.

ARGUMENT ON BEHALF OF THE PETITIONER

7. It is submitted by the learned counsel on behalf of petitioner that in view of the ratio laid down by the Hon'ble Supreme Court in *Vijay Madan Lal Choudhary Versus Union of India Others; 2022 SCC OnLine 929* (para 281), the offence of Prevention of Money Laundering Act is not a standalone offence and it is incumbent on the part of the prosecution to establish the link between the predicate offence and proceeds of crime generated by the said offence. Mere possession of a huge amount in the account of a person, cannot be sufficient to cast the burden of proof on the petitioner/accused to establish the innocence with respect to the offence under PMLA. It is further submitted that after amendment brought in the definition of proceeds of crime as stated in Section 24 of PMLA, the burden of proof can be cast on the accused only after the charge is framed and the accused put on trial.

Earlier the burden of proof under Section 24 of the PMLA Act read as under:

“When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused”.

After 2013 amendment, Section 24 reads as under:

“In the facts of a person charged with the offence of money laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering.”

In view of the amended provision, the provision of burden of proof on accused cannot be invoked under the Act during pre-charge stage and only when the learned Court finds that there are prima facie materials on the basis of which charge is framed then Section 23 or 24 can be invoked.

8. The five F.I.Rs. on the basis of which ECIR has been registered in the complaint filed by the Directorate of Enforcement, is of the year 2021 and 2022, whereas the amount which has been shown in the account of this petitioner is of

the year 2017. Punjab National Bank A/c No.21881132000179 in the name of company M/s Herbal Green Solutions Pvt. Ltd. is with respect to the period 08.03.2017 to 31.12.2021 which shows cash amount of Rs.5,65,17,000/-. There is no trail of this cash amount to the predicate offence on the basis of which ECIR has been registered.

9. Another transaction which has been set out in the prosecution complaint filed by the Enforcement Directorate on 08.03.2022, is with respect to same Punjab National Bank Account of M/s Herbal Green Solutions Pvt. Ltd. which shows credit and debit of the year 2017 of one company M/s Laxmi Global Pvt. Ltd. having office in Kolkata.

10. With regard to the statement of Ravi Kumar Kejriwal (RUD Sl. No.56) wherein he has stated, “he was present in the office of Chief Minister when the C.M. directed Pankaj Mishra to directly hand over the funds coming from Santhal Parganas from stone mining and sand mining business to Prem Prakash. It was also discussed that Prem Prakash (present petitioner) will hand over the funds to Amit Agarwal and that Prem Prakash was very close to Hemant Soren and Amit Agarwal”, it is submitted that he was expelled from the JMM Party in the year 2020 and when he was not even member of the political party, he being privy to the discussions as stated in para 10.28 of the prosecution complaint, is without any basis. Further Smt. Puja Singhal was given charge of Mining Secretary on 3rd August, 2021.

11. There is no First Information Report or Charge Sheet against the petitioner implicating him in illegal mining and he had no concern with Pankaj Mishra. Nothing has been brought on record to show that any prosecution under the provisions of the MMDR Act or Rules made there under has been initiated against the petitioner.

12. Illegal mining is not a scheduled offence and therefore, reference to all those cases in the complaint is of no avail. In this regard, it is submitted that the predicate offence of the instant ECIR, as pointed out in the prosecution report, is a case registered in the year 2020 against Pankaj Mishra, but no charge sheet has been filed against the said Pankaj Mishra in the predicate offence.

13. It is argued that the petitioner had no business connection or had in any manner dealt with Pankaj Mishra (accused No.1 in the prosecution complaint), far less having had any business transaction or being involved in illegal mining and transportation activities related to illegal mining and further laundering the

proceeds of crime.

14. The Investigating Agency has without any material on record and extremely arbitrarily linked M/s Herbal Green Solutions Ltd. and the petitioner with CTS Industries Limited (and its Director, Sanjay Choudhary) only to obliquely establish a connection with the allegation of illegal mining and the transportation of the illegally mined minerals and the alleged proceeds of crime generated therefrom and its laundering. It is argued that the findings of the Enforcement Directorate in its investigation that the business transactions of the petitioner through his company namely M/s Herbal Green Solutions Pvt. Ltd. was processing proceeds of crime / tainted money is absolutely perverse, as there is no transaction to substantiate the charge. Further, the Investigating Agency has failed to draw any nexus between the accused named in the predicate offence and the petitioner. The petitioner further denies that the petitioner had acquired immovable properties in the names of his firms out of proceeds of crime.

ARGUMENT ON BEHALF OF E.D.

The learned ASGI, Sri Anil Kumar appearing on behalf of the Enforcement Department has opposed the bail petition.

15. It is submitted by the learned ASGI that the instant case unfolds rampant illegal mining resulting in huge loss of public revenue in the form of royalty as well large scale **theft** of the natural resources like stone chips and boulders which are public property. This was being carried out under a **criminal conspiracy** of organized crime with political connection with regard to which 50 F.I.Rs. had been registered and has been referred in the prosecution complaint at 3.4. Further, Hon'ble National Green Tribunal in the case of *Syed Arshad Nasar Versus Union of India & Others* by order dated 07.05.2019 (RUD No.124) also took cognizance, constituted a committee and observed as under:

“Undeniably there are a large number of illegal stone mines and crushers operating in the area which have been either closed or at the stage of compliances for the pollution norms.

Considering this, there is also the necessity to assess the environmental damages caused by the illegal stone mines and stone crushing units.

Since the Committee consists of Competent Authorities both statutory and otherwise, we direct them to assess the damages on the following parameters:-

- i. The quantum of minerals extracted and crushed.*
- ii. Damage on account of Net Present Value (NPV) against the ecological loss forgone forever.*
- iii. The ecological damage caused on account of the operation of the illegal unit.*
- iv. Cost against restoration of the environment”.*

The Committee submitted its report on 23.09.2020 in which inter alia a

finding was given that mining companies or other entities are indulging in indiscriminate mining and operating stone crushers without due regard to the environmental norms.

16. The genesis of FIR No.85 of 2020 dated 22.06.2020 lodged with Barharwa Police Station, Sahibganj District, Jharkhand against 11 named and other unknown persons under Sections 147, 149, 341, 342, 323, 379, 504, 506 read with Section 120B of the Indian Penal Code was to stop Sambhu Nandan Kumar (complainant) to participate in the tender for Barharwa Toll, to have control and dominance over the area and thereby enable them to monitor the number of vehicles and quantity of the mining proceeds being carried out in those vehicles. The proceeds of crime generated in the illegal mining, rampant large scale theft under criminal conspiracy was projected and integrated by various means in which complicity of this petitioner has come to light. The statement of one Ravi Kumar Kejriwal, who was earlier Treasurer of JMM, was recorded on 21.07.2022 under Section 50 of PMLA and in his statement he stated that while working as Treasurer, JMM one day he was present in the office of the Chief Minister, when C.M. directed Pankaj Mishra (accused No.1) to directly hand over the funds coming from Santhal Parganas stone mining to this petitioner. It was also observed that the petitioner would hand over funds to Amit Agarwal and that he was very close to C.M., Hemant Soren and Amit Agarwal. Puja Singhal was given additional charge of Mining Secretary, Jharkhand due to her proximity with Amit Agarwal. Further, in statement of Anil Jha, one of the employees of petitioner was recorded under Section 50 of PMLA on 24.05.2022 wherein he stated that he used to receive cash ranging to Rupees Ten Lakhs to Rupees Five Crores, for Prem Prakash (present petitioner) from one location to another. He used to collect cash from different persons and used to hand over them to Prem Prakash. All was done over the instruction received from Prem Prakash over face time application through Apple I Phone.

17. It is further argued that against this background, the amount credited to the tune of Rs.5,30,00,000/- in the Punjab National Bank Account of M/s Herbal Green Solutions Pvt. Ltd. and debits of Rs.5,65,90,000/- in the year 2017 with one company M/s Laxmi Global Pvt. Ltd. is to be considered and appreciated. No reasonable and plausible explanation has been given by the petitioner under Section 50 of PMLA on 03.09.2022 wherein he has stated that friendly loan which he got from one Sanjay Choudhary of Kolkata, but did not remember the rate of interest of the amount. It is beyond dispute that Sanjeev Choudhary, Amit

Choudhary and Sanjay Choudhary were all related to each other. Another evidence of proceeds of crime, is the cash received in the PNB Account of M/s Herbal Green Solutions Pvt. Ltd. for sum of Rs.5,65,17,000/- and payment worth Rs.5,31,18,000/- to one being M/s Aurora Studio Pvt. Ltd., a company of Amit Agarwal, during the period 26.08.2020 to 08.01.2021. Amit Agarwal, Pankaj Mishra and the present petitioner were all hand in glove in laundering the proceeds of crime. It is argued that offence of criminal conspiracy and that under Section 414 of the IPC is a scheduled offence.

18. In reply, it is submitted by learned counsel on behalf **petitioner** that any offence related to mining, is not a predicate offence. In the present case and in any case, illegal mining is not a scheduled offence for which PMLA can be invoked.

Reliance has been placed on *Writ Petition No.5962 of 2016; Obulapuram Mining Company Pvt. Ltd. Versus Joint Director, Directorate of Enforcement & Others* in which High Court of Karnataka has quashed the ECIR and the order passed by the adjudicating authority on the ground that mining was not a schedule offence. **It is submitted by learned ASGI that** Hon'ble Supreme Court has noted that order will not act as a precedent.

19. After having considered the rival submissions advanced on behalf of both the sides, this Court is of the view that the argument advanced on behalf of the E.D. is persuasive enough to reject the petition for bail. Contrary to the submission by the learned Counsel on behalf of the petitioner, the offence of money laundering is an independent offence and it is not necessary that the accused charged with the offence of money laundering are the same who are made accused in predicate offence as per the ratio decided in *Vijay Madan Lal Choudhary* (supra) (Para 269 and 270). The law enforcement agencies are now confronted with a new species of crime in the form of money laundering, which necessitated the special Act. The law is evolving with different amendments and judicial pronouncements. These are not like conventional crime and the modus operandi involves three stages: (a) **Placement**: which is to move the funds from direct association of the crime. (b) **Layering**: which is disguising the trail to foil pursuit. (c) **Integration**: which is making the money available to the criminal from what seem to be legitimate sources.

20. A normal business transaction between the different entities involved in the criminal conspiracy cannot be expected in such cases and therefore, the provision for reverse burden has also been made under Sections 23 and 24 of the

PMLA. In the present case, the role of this petitioner has come-up in the statement of Ravi Kejriwal and Anil Jha, as discussed above. Huge **cash transactions** have been shown in the account of the company in the name of this petitioner, regarding which no plausible explanation has been offered. The investigation revealed that the cash receipts amounting to Rs.5,65,17,000/- in Punjab National Bank Account No.21881132000179 of M/s Herbal Green Solutions Pvt. Ltd, and subsequent payments worth Rs.5,31,18,000/- to one company M/s Aurora Studio Pvt. Ltd., a company of Amit Agarwal, required to be satisfactorily answered by the petitioner, but he failed to do so. Quite interestingly, even two AK 47 rifles were seized from his house which are said to be of the security guards not posted in his place.

The case is still at its nascent stage and it will not be in the interest of justice to enlarge the petitioner on bail.

The petition for bail stands rejected.

(Gautam Kumar Choudhary, J.)