



Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION [STAMP] NO.20120 OF 2024

Deepak Appasaheb Deshmukh]
(Currently lodged in Mumbai Central Jail)] Petitioner
Vs.
Directorate of Enforcement, Mumbai – II]
Zonal Office and others] Respondents

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Mr. Sudeep Pasbola, Senior Advocate a/w Mr. Vaibhav Gaikwad,
Mr. T.S. Mali i/b Mr. Sandeep R. Karnik, for Petitioner.

Mr. Sandesh Patil, Special Public Prosecutor a/w Mr. Krishnakant P.
Deshmukh and Mr. Shubhankar Kulkarni, for Respondent Nos.1
and 2 – Directorate of Enforcement.

Ms. P.P. Shinde, A.P.P, for Respondent No.3 – State.

Mr. Venkata Naren Garapaty, Assistant Director of Respondent
No.1 present.

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CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.

DATE : 25th OCTOBER, 2024.

ORDER: [Per Prithviraj K. Chavan, J.]:

1. By this petition the petitioner invokes writ jurisdiction of this Court challenging his arrest, detention and remand by the respondent No.1 – Directorate of Enforcement on 4th September, 2024 in connection with ECIR bearing No. ECIR/MBZO – II/31/2021 [P.M.L.A Case No.734 of 2022].

2. A few relevant facts are summarized as follows.

3. An First Information Report (for short “F.I.R”) bearing No.307 of 2016 dated 30th November, 2016 was registered with *Vaduj* Police Station, *Satara* under sections 420 r/w 34 of the Indian Penal Code (for short “I.P.C”) in a predicate offence. A charge-sheet in the predicate offence came to be registered on 14th September, 2017 by *Vaduj* Police Station, *Satara*. One Arun Gore filed complaint with Directorate of Enforcement against the Board of Directors of *Chhatrapati Shivaji* Education Society, *Kolhapur* on 17th September, 2021. The said complaint was filed against the Board of Directors of the said society for the period from 2011-2016.

4. Accordingly, the aforesaid ECIR came to be registered by the respondent No.1 on 20th October, 2021. One Mahadev Deshmukh came to be arrested on 6th May, 2022 in the said ECIR. Similarly, father of the petitioner namely Appasaheb Deshmukh was also arrested on 6th May, 2022 in the said ECIR. First summons was issued by the respondent Nos.1 against the petitioner on 22nd June, 2022 which was duly replied. Second summons came to be issued

on 28th June, 2022. Ultimately, F.I.R bearing No.307 of 2016 came to be compounded in a *Lok Adalat* at *Vaduj*.

5. Pursuant to an order dated 11th January, 2023 passed in Criminal Writ Petition No.298 of 2023 filed by the Police Authorities in this Court, order of *Lok Adalat* was stayed by which F.I.R No.307 of 2016 came to be compounded on 12th November, 2022.

6. Subsequently, third summons came to be issued by the respondent No.1 against the petitioner on 12th February, 2024 which was also duly replied by the petitioner.

7. Meanwhile, the petitioner filed a complaint against Jaykumar Gore and others with the C.E.O, Mahatma *Jyotiba Phue Jan Arogya Yojana* on 24th May, 2024 for initiating legal actions with regard to COVID scam. The said complaint was filed with *Vaduj* Police Station *Satara* against Jaykumar Gore and others on 12th June, 2024.

8. Subsequently, a Criminal Writ Petition (Stamp) No.13391 of 2024 came to be filed before this Court seeking direction to register an F.I.R against Jaykumar Gore and others. This Court by an order dated 22nd July, 2024 directed the Superintendent of Police, *Satara* to supervise the investigation in respect of the complaint dated 12th June, 2024 filed by the petitioner.

9. Meanwhile, the respondent No.1 conducted a raid in the house of the petitioner on 2nd August, 2024 in furtherance of the aforesaid E.C.I.R. On 12th August, 2024, the petitioner averred before this Court that he was being targeted and harassed after passing of an order by this Court on 22nd July, 2024 directing the Superintendent of Police, *Satara* to supervise the investigation in respect of the complaint dated 12th June, 2024 filed by the petitioner.

10. The petitioner came to be arrested on 4th September, 2024 by the respondent No.1 and was produced before the special P.M.L.A Court, Greater Mumbai on 5th September, 2024 and ultimately remanded to Directorate of Enforcement's custody till 12th September, 2024. When the petitioner was again produced before

the Special P.M.L.A Court on 12th September, 2024, respondent No.1 sought judicial custody of the petitioner.

11. We heard Mr. Pasbola, learned senior Counsel appearing for the petitioner and Mr. Sandesh Patil, learned Special Public Prosecutor, appearing for respondent No.1. We have also perused the documents as well as the affidavit-in-reply tendered on behalf of respondent No.1.

12. Without adverting to the merits of the case, the only question which needs to be answered is as to whether arrest, detention and remand of the petitioner, *prima facie*, can be said to be just, legal and proper in view of the ratio laid down by the Supreme Court in the case of **Arvind Kejriwal Vs. Directorate of Enforcement**¹, in the sense, whether there was sufficient material with the authorized officer who had recorded his “*reasons to believe*” in writing and whether there was a “necessity to arrest” the petitioner”? In an earlier **Criminal Writ Petition [Stamp] No.16175 of 2024 [Priyavrat Mandhana Vs. Directorate of Enforcement and others]**, we have already discussed the scope of the judgment in case of **Arvind**

1 2024 SCC Online SC 1703

Kejriwal (supra), V. Senthil Balaji Vs. State and others², Pankaj Bansal Vs. Union of India and others³ and Vijay Madanlal Choudhary and others Vs. Union of India and others⁴ wherein the facts are almost identical to that of the case at hand. At the time of hearing the petition, Mr. Venkata Naren Garapaty - Assistant Director and an investigating officer was also present. Mr. Patil, learned Special Public Prosecutor and the Assistant Director candidly admitted that the petitioner has neither been named in the F.I.R nor charge-sheeted in the instant crime. The only ground of his arrest is non co-operation during investigation.

13. It is the contention of the respondent No.1 that the petitioner had received an amount of Rs.49.50 lakhs out of the total proceeds of crime of Rs.69 Crores which was the cash amount collected from gullible students/parents under the guise of MBBS admission for the year 2011-2016. Shri Appasaheb Deshmukh who is the father of the petitioner was a treasurer of the society during the said period. The petitioner's family was actively involved in the transactions connected with the proceeds of crime. It is also the contention of the respondent No.1 that Appasaheb Deshmukh in his statement

2 (2024) 3 Supreme Court Cases 51.

3 2023 SCC Online SC 1244

4 (2022) SCC Online SC 929

dated 16th June, 2022 has, *inter alia*, stated that the petitioner was his dependent and has no source of income. Despite summoning him on three occasions, he did not appear but preferred an application seeking anticipatory bail which came to be rejected on 30th November, 2023. It is also the contention of the respondent No.1 that during interrogation of the petitioner in ED custody, he was evasive in his reply *qua* his business transactions in relation to his firm etc. As such, the respondent No.1 contended that the arrest has been made on the basis of material in possession of it which formulates the “reasons to believe” which came to be recorded in terms of section 19 (1) of the Prevention of Money Laundering Act, 2002.

14. Interestingly, “Reasons to believe” for invoking section 19 of the PMLA 2022 for arrest of the petitioner and “the grounds of arrest” recorded by the Assistant Director of the respondent No.1 are exactly identical. Paragraph 9 of the “reasons to believe” for invoking section 19 of the PMLA are as under;

- (i) To prevent the destruction of evidence.
- (ii) To confront him with statements of various persons who are involved in these activities.

- (iii) To trace out the diverted funds which is the proceeds of crime;
- (iv) To prevent him from influencing the witnesses.
- (v) To identify other persons involved in these activities.

15. Surprisingly enough, even “the grounds of arrest” which are recorded on the same date in paragraph 6 are as follows;

- (i) To prevent the destruction of evidence.
- (ii) To confront him with statements of various persons who are involved in these activities.
- (iii) To trace out the diverted funds which is the proceeds of crime;
- (iv) To prevent him from influencing the witnesses.
- (v) To identify other persons involved in these activities.

On being asked, neither the Investing Officer nor the Special Public Prosecutor could satisfy us as to how the “reasons to believe” and “the grounds of arrest” could be exactly identical.

16. Be that as it may. Admittedly, the petitioner has neither been named in the F.I.R nor has he been charge-sheeted in the scheduled

offence. That is not to say that he cannot be arraigned as an accused in the ECIR. The question is the necessity of arrest. We, in the facts find that the respondent No.1 has utterly failed to adhere to the ratio laid down by the Supreme Court in case of **Arvind Kejriwal** (supra), in the sense, there is no objective satisfaction but only the subjective satisfaction of the investigating officer of the respondent No.1. *Prima facie*, it appears that the petitioner has not been arrested in good faith, for, the crime in question which allegedly took place during the period from 2011 to 2016. It appears that the petitioner came to be arrested after eight years as a counterblast to the petition filed by the petitioner being Criminal Writ Petition [Stamp] No.13391 of 2024 seeking direction for registration of an F.I.R against one Jaykumar Gore and his colleagues in the alleged COVID scam done by them in the said society.

17. We, *prima facie*, find some merit in the argument of the learned Senior Counsel appearing for the petitioner that it is indeed a counterblast to a petition filed by the petitioner as above, for, had there been really some substance in the allegations levelled by the respondent No.1, they would have arrested him long back with his father when allegedly all the material and evidence has been in their possession.

18. Mr. Pasbola, learned Senior Counsel while lambasting the action of the respondent No.1 argued as to how the action of the respondent No.1 is *ex facie mala fide*, illegal and against the principles laid down by the supreme Court in the case of **Arvind Kejriwal** (supra). The Senior Counsel would argue that a sitting M.L.A of a political party was the President of the said society influenced the respondent No.1 in the arrest and detention of the petitioner without following due process of law. It would be apposite to extract paragraph (xxii) at page 28 of the petition which reads thus;

(xxii) After the issuance of the said last summons dated 12.02.2024 there was no summons by the Respondent no.1 to the Petitioner. The Petitioner states that Respondent No.1 since inception started all the activity at the instance of Mr. Jaykumar Gore who is sitting MLA of Bharatiya Janta Party. The dispute started over the illegal acts done by Mr. Jaykumar Gore during his tenure as President of the said Society. The Petitioner states that the said Mr. Gore during the COVID – 19 period committed fraud and obtained an amount of Rs.3 to 4 Crores from the Government in the name of Mahatma Jyotiba Phule Jan Arogya Scheme. The Cousin brother of the Petitioner namely Himmat Deshmukh firstly submitted the complaint to Health Minister Mr. Rajesh Tope. The copy of the

*said complaint dt 07.06.2021 is marked and annexed as **“Exhibit –O”**.*

We, *prima facie*, do not find any reason as to why and how the petitioner who has neither been named in the F.I.R nor has been charge-sheeted in the scheduled offence came to be arrested after eight years. It is not that the petitioner was not attending the investigating agency at all. It is open for us to examine the question whether the “reasons for the belief” have any rational connection or have any bearing on the formation of the belief and are not extraneous or irrelevant to the purpose of the section. It would be apposite to extract paragraphs 72 to 74 in the case of **Arvind Kejriwal** supra;

*“72. However, we must observe that in paragraph 32 of **V. Senthil Balaji** (supra), it is held that an authorised officer is not bound to follow the rigours of Section 41A of the Code as there is already an exhaustive procedure contemplated under the PML Act containing sufficient safeguards in favour of the arrestee. Thereafter, in paragraph 40 of **V. Senthil Balaji** (supra), it is observed:*

“40. To effect an arrest, an officer authorised has to assess and evaluate the materials, in his possession. Through such materials, he is expected to form a reason

to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the authorised officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the adjudicating authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.”

73. In **Prabir Purkayastha** (supra), this Court went beyond the rigours of the PML Act/UAPA. Drawing a distinction between “reasons to arrest” and “grounds for arrest”, it held that while the former refers to the formal parameters, the latter would require all such details in the hands of the investigating officer necessitating the arrest. Thus, the grounds of arrest would be personal to the accused.

74. Therefore, the issue which arises for consideration is whether the court while examining the validity of arrest in terms of

Section 19(1) of the PML Act will also go into and examine the necessity and need to arrest. In other words, is the mere satisfaction of the formal parameters to arrest sufficient? Or is the satisfaction of necessity and need to arrest, beyond mere formal parameters, required? We would concede that such review might be conflated with stipulations in Section 41 of the Code which lays down certain conditions for the police to arrest without warrant:

.Section 41(1)(ii)(a) – preventing a person from committing further offence.

.Section 41(1)(ii)(b) – proper investigation of the offence.

.Section 41(1)(ii)(c) – preventing a person from disappearing or tampering with evidence in any manner.

.Section 41(1)(ii)(d) – preventing the person from making any inducement or threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or police.

.Section 41(1)(ii)(e) – to ensure presence of the person in the Court, whenever required, which without arresting cannot be ensured.

However, Section 19(1) of the PML Act does not permit arrest only to conduct investigation. Conditions of Section 19(1) have to be satisfied. Clauses (a), (c), (d) and (e)

to Section 41(1)(ii) of the Code, apart from other considerations, may be relevant”.

19. Both the documents furnished to the petitioner captioned as “grounds of arrest” and “reasons to believe” are, *prima facie, sans* application of mind by the respondent No.1. *Prima facie*, it appears that custody of the petitioner was sought despite the respondent No.1 having already in possession of the relevant documents of which there is no question of getting the same tampered with. *Prima facie*, we find that the respondent No.1 has misused its power of arrest which are not in consonance with the observations made by the Supreme Court in the case of **Vijay Mandanlal Choudhary** (supra) as well as in the case of **Arvind Kejriwal** (supra). *Prima facie*, it appears that the powers have been exercised on the basis of whims, caprice or fancy of the investigating officer.

20. Although, Mr. Patil, submitted that the petitioner was arrested as he failed to co-operate in the investigation, it is well settled that non co-operation cannot be a ground to arrest. The Apex Court in case of **Arvind Kejriwal** (supra) has in para 24 observed as under;

“24. In so far the grounds of arrest are concerned, I am of the view that those would not satisfy the test of necessity to justify arrest of the appellant and now that the appellant is seeking bail post

incarceration, those cannot also be the grounds to deny him bail. The respondent is definitely wrong when it says that because the appellant was evasive in his reply, because he was not cooperating with the investigation, therefore, he was rightly arrested and now should be continued in detention. It cannot be the proposition that only when an accused answers the questions put to him by the investigation agency in the manner in which the investigating agency would like the accused to answer, would mean that the accused is cooperating with the investigation. Further, the respondent cannot justify arrest and continued detention citing evasive reply.”

21. Considering our observations as stated aforesaid, we are, *prima facie*, of the opinion that the arrest and detention of the petitioner on 4th September, 2024 and the consequent orders of remands dated 5th September, 2024 and 12th September, 2024 are illegal, passed in sheer ignorance of the ratio laid down by the Supreme Court in the case of **Arvind Kejriwal** (supra).

22. We are, therefore, inclined to grant interim relief of bail to the petitioner in light of the discussion made hereinabove as right to life and liberty is sacrosanct in view of the constitutional mandate.

23. Now, to the order.

: **ORDER** :

(a) Pending the disposal of the petition, the petitioner shall be released on executing a P.R bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the learned Special Judge under PML Act, City Civil and Sessions Court, Mumbai in connection with ECIR No. ECIR/MBZO-II/31/2021.

In case the petitioner is unable to furnish sureties of the amount aforesaid, he be released on furnishing cash security in the sum of Rs.50,000/- for a period of six weeks.

(b) The petitioner shall co-operate with the respondents as and when summoned;

(c) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case or tamper with the evidence;

(d) The petitioner shall furnish his residential address and contact details to the respondent Nos.1 and 2.

(e) Needless to say that breach of any of the aforesaid conditions would entitle respondent Nos.1 and 2 to seek cancellation of the interim relief.

24. List the petition for admission on **26th November, 2024.**

25. All parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]