

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-63-2020**

Vishal Kumar ... Applicant

Versus

State & Anr. ... Respondents

Shri S.S. Kantak, Senior Advocate with Shri Athnain Naik, Advocate for the Applicant.

Shri Nikhil Vaze, Special Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 15 October 2020****ORAL ORDER :**

Earlier, the Central Bureau of Investigation registered Crime No.RC/1(a)/2018-CBI/ABC/Goa against the applicant and four others. It was for the alleged offences under section 13(2), read with section 13(1)(c) and (d) of the Prevention of Corruption Act, and sections 409, 420, 468, and 471, read with 120-B of IPC. The applicant, an Official in a nationalised bank, has been accused of conspiring with the loanee, who in turn faces the allegation of playing fraud and misusing the loan sanctioned to him. In that crime, the applicant has already secured anticipatory bail. We need not go into the details of that crime or the subsequent developments there.

2. Now, the Enforcement Directorate (“the ED”) issued summons to the applicant under Section 50 of the Prevention of Money Laundering Act (“PML Act”). The applicant, it seems, is required to produce certain documents before the authorities

concerned. The ED, it is said, is conducting a preliminary investigation to ascertain the scheduled predicate offence, in which the applicant is an accused, has given rise to any money laundering. Apprehending arrest, the applicant has filed this application under Section 438 of the CrPC. It is for anticipatory bail.

3. I queried why the applicant has not approached, in the first instance, the trial Court. In response, Shri Kantak, the learned Senior Counsel, informs me that earlier, in another case, the Sessions Court concerned rendered a judicial finding that it has no jurisdiction to entertain an application for an anticipatory bail in proceedings under the PML Act. So, according to him, the applicant has been constrained to approach this Court.

4. As to the threat of arrest and the applicant's claim to the anticipatory bail, the learned Senior Counsel has advanced his arguments.

5. In response, Shri N. Vaze, the learned Special Public Prosecutor for the ED, has clarified the position. According to him, Section 50 of the PML Act confers powers on the Enforcement Directorate to summon and secure evidence as if it were a civil Court. The summons issued to the applicant, he stresses, does not even remotely indicate that there is any threat of arrest, leave alone imminent threat of arrest. Then, the learned Special Public Prosecutor has taken me through certain provisions of the PML Act. It is to explain under what circumstances a person may be arrested under the PML Act. According to Shri Vaze, those circumstances are unavailable, at this juncture, in this case. Thus, he contends that the applicant's apprehension of imminent threat of arrest is misplaced.

6. In reply, the learned Senior Counsel has stressed that if the ED says that the proceedings are preliminary and that the authorities are only examining whether the predicate offence has given rise to money laundering, the applicant could have no further grievance. In fact, the learned Special Public Prosecutor affirms that it is only a preliminary inquiry, essentially, a fact-finding one on the ED's part.

7. Under these circumstances, I agree that the applicant's apprehension is misplaced, and thus the application for anticipatory bail does not survive.

8. With the above observations, I close the above anticipatory bail application.

9. At the request of the learned Special Public Prosecutor, I clarify that this order does not even remotely suggest that the applicant should not cooperate with the authorities. He ought to.

10. Shri Kantak, the learned Senior Counsel, informs me that the applicant is stationed at Dhanbad in Jharkhand. Responding to the summons, he has already come to Goa. Now and in future, he underlines, the authorities concerned may keep in view the distance factor and facilitate the applicant's reasonable requests while his attending the inquiry or investigation, if any. I trust the authorities are not oblivious of the practical difficulties people, including the applicant, face.

Thus, I close this application.

DAMA SESHADRI NAIDU, J.

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