REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1198 OF 2023
(Arising out of SLP (Crl.) No.1655 of 2023)

SANJAY RAGHUNATH AGARWAL ...APPELLANT

VERSUS

THE DIRECTORATE OF ENFORCEMENT ...RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.

2. Heard Shri R. Basant, senior counsel and Shri S.V. Raju, learned Additional Solicitor General for the parties.

3. A criminal complaint in FIR No.664/2013 was registered on 29.10.2013 with the Cyberabad Police, against six persons, including the appellant *herein* for alleged offences under Sections 406, 407, 415 to 420, 120B read with Section 34 IPC. The FIR was registered on the basis of a complaint lodged by one M. Srinivas Reddy, who was the Managing Director of a Company by name M/s Farmax India Limited[1]. The gist of the complaint was,

1hereinafter referred to as "***Farmax***"

IBC Laws | www.ibclaw.in

that Farmax availed the services of the accused in raising Global Depository Receipts (GDRs), to the tune of USD 71.09 millions equivalent to INR 318 crores; *that* though the accused raised the said amount, they transferred to Farmax only a sum of USD 0.4 millions equivalent to INR 2.20 crores; and *that* upon enquiry with the bank, the complainant company came to know that the accused has misappropriated the balance amount by forging the signatures, with the help of the pledged documents.

4. It is relevant to note here that the aforesaid FIR was registered, pursuant to an Order passed by the VI Metropolitan Magistrate, Cyberabad at Medchal, Rangareddy District, under Section156(3) of the Code of Criminal Procedure, 1973.

5. Though the FIR was registered more than nine years ago, no final report has been filed so far. However, the raising of GDR by Farmax became the subject matter of enquiry by Securities and Exchange Board of India[2]. SEBI passed an Order dated 14.07.2020 holding that there were violations of various provisions of Securities and Exchange Board of India Act, 1992 and various regulations of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. More

2 For Short "***SEBI***"

particularly, SEBI found one Mr. Arun Panchariya and a few others guilty of misleading Indian investors through 14 identical GDR issues involving fraudulent schemes.

6. Pursuant to the aforesaid, the Enforcement Directorate filed an information report in ECIR No.HYZO/26/2022 dated 05.05.2022, naming six individuals and nine entities, as persons suspected of committing the offence of money-laundering under Section 3 of the Prevention of Money-laundering Act, 2002[3].

7. After the lodging of the Enforcement Case Information Report, the appellant was arrested by the Enforcement Directorate on 26.09.2022. By an Order dated 27.09.2022, the appellant was remanded to judicial custody by the Metropolitan Sessions Judge, Hyderabad. The Court also granted the custody of the appellant to the Enforcement Directorate for a period of six days from 06.10.2022 to 11.10.2022.

8. Subsequently, the Enforcement Directorate filed a prosecution complaint under Sections 44 and 45 of PMLA against four individuals and two entities, *namely*, *(i)* Shri Sanjay Aggarwal, *(ii)* Shri Morthala Malla Reddy, *(iii)* Shri Arun Panchariya, *(iv)* Shri Mukesh Chauradiya, *(v)* M/s La Richesse Advisors Private limited represented by Shri Sanjay Aggarwal and

3 For short "**PMLA**"

(vi) M/s Vintage FZE, UAE represented by Shri Arun Panchariya. The sum and substance of the complaint was, *that* Farmax availed the services of the appellant *herein* and the other accused in raising GDRs to the tune of USD 71.09 millions equivalent to INR 318 crores; *that* Vintage FZE, a wholly owned entity of Arun Panchariya solely subscribed to these GDRs, after availing a loan from EURAM Bank, under a loan agreement dated 05.05.2020; *that* Farmax executed a pledge agreement with EURAM Bank, undertaking that the entire proceeds will be pledged to secure the loan granted by EURAM Bank; *that* though Farmax issued GDRs, the proceeds were not credited to Farmax's credit in India, as the same had been kept as collateral; *that* Vintage FZE repaid only part of the loan and, hence, the balance amount alone got released by the bank to Farmax; *that* this diversion of funds caused a loss to Farmax to the extent of USD 15.60 millions; *that* the GDRs were thereafter converted into equity shares and sold in the Indian Stock Market; *that* when Farmax was advised by the appellant to go for GDRs, Farmax was not eligible for the amount of GDR; *that* therefore, the appellant *herein* and the entity owned by him took the lead role in coordinating the offering; *that* the appellant was the central figure in the entire drama; *that* the

appellant is a qualified Chartered Accountant, having had experience of working with stock exchange filings related to GDRs; *that* the appellant was introduced by Arun Panchariya to Srinivas Reddy; and *that* the appellant and the others had committed the offence of money-laundering.

9. According to the Enforcement Directorate, the appellant was responsible for creating the entire infrastructure for Farmax and Arun Panchariya to bring about the fraudulent GDR issue and that the appellant provided formats for Board Resolutions and also helped in transferring the funds from the account of Farmax with EURAM Bank to the Farmax subsidiary, namely, M/s. Farmax International FZE in UAE.

10. In the background of the above facts, it is contended by Shri R. Basant, learned senior counsel: ***(i)*** that the appellant has been languishing in jail from 26.09.2022, without any charge-sheet having been filed against him in the predicate offence for the past more than nine years; ***(ii)*** *that* even Srinivas Reddy at whose instance a FIR was registered way back in the year 2013 for the predicate offence was arrested by the Enforcement Directorate, but the application filed by the Enforcement Directorate for his remand was rejected by the Court; ***(iii)*** *that* the appellant is a

Chartered Accountant by profession and that he offered only professional services within the framework of law; and ***(iv)*** that there is nothing in the prosecution complaint to show that the appellant is in possession of "*the proceeds of crime*".

11. However, it is contended by Shri S.V. Raju, learned Additional Solicitor General ***(i)*** that the appellant is the kingpin and the master mind behind all the transactions; and ***(ii)*** *that* the petition for bail deserves to be dismissed in view of the twin conditions prescribed in Section 45 of PMLA.

12. We have carefully considered the rival contentions.

13. Since the main contention of the learned Additional Solicitor General revolves around Section 45 of PMLA, it is necessary to see the specific role assigned to the appellant in the prosecution complaint lodged by the Enforcement Directorate. The relevant portion of paragraph 8 of the prosecution complaint reads as follows:

> **"SPECIFIC ROLE OF THE ACCUSED/ CO-ACCUSED PERSONS IN THECOMMISSION OF OFFENCE OF MONEY LAUNDERING IN TERMS OFSECTION 3 OF PMLA:**
>
> - **Role of Shri Sanjay Aggarwal (A-1):-**
>
> a) Based on Sanjay Agarwal's assurances, M/s Farmax India Limited decided to proceed with plans for a GDR listing. At this point of time M/s Farmax India Limited was not eligible for USD 72.20 million GDR. Sanjay Agarwal and M/s La Richesse, accompanied by Nitish Bangera took the lead role coordinating the offering.

Sanjay Agarwal decided on all the participants, including the Lead Arranger (Prospect Capital) and the company's legal advisor ("Fox Mandal"). Although, Fox Mandal acted as counsel to Farmax, the email communications indicate that its role was limited to preparing a due diligence report and the Listing Prospectus ("Prospectus") to be filed with the Luxembourg Exchange.

b) Sanjay Agarwal acted as an intermediary for almost all communications with the various participants, and gave instructions to M/s Farmax India Limited before and after the offering. Notwithstanding that Agarwal was the central figure who gave instructions to Farmax which was duly followed by Morthala Srinivasa Reddy. (A-1) being a qualified Chartered Accountant, had experience of working with stock exchange filings related to GDRs, and was introduced by Arun Panchariya to MD of Farmax Ltd, Shri M. Sreenivasa Reddy. (A-1) by representing Arun Panchariya's firm Prospect Capital before the depositary, the Bank of New York and being well aware of the relation Arun Panchariya had with EURAM Bank insisted all companies going through GDR to open a bank account in that particular bank, (A-1) being well aware of the arrangement between Arun Panchariya and the Company promoters to share the proceeds of GDR, took the lead role of coordinating the offering, by purposely hiding the subscriber list from submitting to Ahmedabad Stock Exchange and hence was directly involved in the process and activity connected with the proceeds of crime including its acquisition and hence has committed the offence of money-laundering as defined under section 3 of PMLA, 2002 and is liable for punishment under Section 4 of PMLA, 2002."

14. Keeping in mind the specific role attributed to the appellant, let us now revert back to the facts pleaded and arguments advanced. At the outset, there is no controversy about the following facts:

(i) *that* the registration of the ECIR and the lodging of the prosecution complaint in the year 2022 were a sequel to the registration of the FIR for the predicate offence,

way back in the year 2013, at the instance of one M. Srinivas Reddy, Managing Director, Farmax and also a sequel to the order passed by SEBI in the year 2020;

(ii) *that* no final report has been filed in the FIR for the predicate offence, for the past nine years;

(iii) *that* even M. Srinivas Reddy, the *de-facto* complainant in the FIR for the predicate offence, was sought to be arrested as an accused in connection with the ECIR, but the application of the Enforcement Directorate for remand was rejected;

(iv) *that* the appellant is a Chartered Accountant by profession and has been in jail from 26.09.2022; and

(v) *that* the relevant portion of paragraph 8 of the prosecution complaint filed by the Enforcement Directorate, which we have extracted in the preceding paragraph, gives room for a valid argument that the second condition found in Clause (ii) of sub-section (1) of Section 45 of PMLA is satisfied *qua* the appellant.

Therefore, the continued incarceration of the appellant, in our opinion, may not be justified.

15. However, the apprehension of the Enforcement Directorate that the appellant is a flight-risk and may go out of the country if released on bail, has to be taken care of by imposing appropriate conditions.

16. In view of the above, the appeal is allowed and the appellant is directed to be enlarged on bail in ECIR No.HYZO/26/2022 dated 05.05.2022, subject to such terms and conditions as may be imposed by the Metropolitan Sessions Judge-cum-Special Court under PMLA, Nampally, Hyderabad. The conditions to be imposed by the Special Court shall include the following additional conditions:

(i) The appellant shall surrender his passport before the Special Court; *and*
(ii) The appellant shall regularly appear before the Special Court without fail whenever the prosecution complaint filed by ED is posted.

The appeal is allowed on the above terms. No costs.

..... J.
(V. RAMASUBRAMANIAN)

..... J.
(PANKAJ MITHAL)

New Delhi;
April 20, 2023