
CASE COMMENT: GAUTAM KUNDU VS. THE ENFORCEMENT DIRECTORATE

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Decided On: *28.02.2020*

Citation: *MANU/WB/0348/2020*

Court: *The High Court of Calcutta*

Hon'ble Judges/ Quorum: *Shivakant Prasad, J.*

Counsels for Appellant/ Petitioner: *Milon Mukherjee, Sabyasachi Banerjee and Biswajit Manna*

Counsels for Respondents/ Defendants: *Amajit Dey*

INTRODUCTION

The process which is often used by big businesses to chain their illegal money into legal money or some other asset is Money Laundering. Simply, it tends to be characterized as the demonstration of bringing in cash that comes from one source to seem as though it comes from another source i.e. to make the dirty money look clean. The definition given by INTERPOL is **"any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources"**.¹

“Money laundering is giving oxygen to organised crime.”

-Enrique Peña Nieto, President of Mexico, in June 2012

In order to analyze the issues of the present case, it is pertinent to contemplate the meaning of the term “money laundering”. It is defined under **Section 3** of PMLA and is punishable under **Section 4** of the Act, with rigorous punishment ranging between 3 to 7 years, along with the provision of fine. The application of the definition implies that people even remotely related shall be roped in.

BACKGROUND

Gautam Kundu is the Chairman of Rose Valley Real Estate Construction Ltd. (The Group)

DATE/ YEAR	EVENT/ BACKGROUND
1999	Rose Valley Group incorporated
2001-08	Private Placement of Debentures, without following SEBI norms and later using it to launder money.
26.04.2013	SEBI filed a complaint against the petitioner and 8 other office holders of

¹ Interpol General Secretariat Assembly in 1995, <https://www.interpol.int/en/Crimes/Financial-crime/Money-laundering> (last visited: May 3, 2021).

	the group
2013	SEBI imposed a penalty of INR 1 crore on the Group for violation of provisions of the SEBI Act, 1992
25.03.2015	Accused arrested on allegations of Section 4, PMLA
04.08.2015	Bail granted- 2 weeks because of father's demise.
July 2015	Appellant filed a bail application, which was rejected, owing to the grievousness of allegations. ²
17.04.2017	The trial Court was directed to frame charges within 2 months

It has been alleged that the Group, not only did not follow the SEBI to raise the amount of money, it also used the debentures for different purposes than stated, for example the issue of Ashirwad scheme used for project Mandarmoni. It was contended by the defendant that the group siphoned off the funds in order to avoid the regulatory norms of SEBI and RBI and thus laundered money to different bank accounts, thereby committing offence punishable u/s 4 of the Prevention of Money Laundering Act, 2002 (PMLA).

ISSUES

- Whether bail may be granted when a person is accused of money laundering and the framing of charges is delayed than the ordered period of time?

² Gautam Kundu v. Manoj Kumar, MANU/SC/1453/2015.

- Whether bail may be granted when the accused has completed one-half of the maximum punishment prescribed under PMLA?

ANALYSIS

1. The contentions of the petitioner included:
 - a. The court has previously directed the Trial Court in 2017 to frame charges within a period of 2 months, which has not been done even after 2.5 years.
 - b. The custody period completed by the accused is 4 years and 11 months, which is more than one-half of the maximum punishment (7 years) for the offence.
 - c. Section 45 of the PMLA's twin restrictions on the Court's discretion to grant bail to the accused have been repealed in *Nikash Tarachand Shah v. Union of India and Anr.*³, has been struck down as unconstitutional.
2. Nevertheless, the nature of the case is sensitive thus providing a merit to the Trial Court in refraining from granting bail to the petitioner even beyond one-half of the maximum imprisonment period as against Section 436A of Cr.P.C. However, the said observation was termed illegal, with supporting citation of *Bhim Singh v. Union of India*⁴. Furthermore, the only impacting factor in the case shall be the presence of delay, rather than the gravity of offence. It was also held in the case of *Subrata Chatteraj v. Union of India*⁵ that delay in investigation and trials is a violation of Article 21 of the Indian Constitution.
3. The contention of the petitioner's counsel regarding Section 436A of Cr.P.C. was countered by the ED on the interpretation of the provision itself. It was substantiated by the part "*provided for the said offence under that law.*", thus implying that the Court is empowered to not grant bail even after completion of the said period.
4. The Court observed that the Group had collected a sum total of approx 12,363 crores from the public and did not use it for the specified purposes. Furthermore, the delay in the framing of charges can be attributed to the wrongful tactics adopted by the accused

³ Nikash Tarachand Shah Vs. Union of India and Anr., MANU/SC/1480/2017.

⁴ Bhim Singh v. Union of India, MANU/SC/0786/2014.

⁵ Subrata Chatteraj Vs. Union of India, MANU/SC/1242/2015.

and others in the series of cases by moving several bail applications and other motions on various points of time. Thus rejecting the petition for bail on the grounds of graveness and enormity of crime done against public welfare.

COMMENTS:

1. The decision of the Court is appropriate, considering the number of applications that have been filed by the accused and others to waste the time of Court and delay their conviction.
2. While the decision does not change any existing laws, it does acknowledge the need to take stringent steps in this area and to provide justice at the earliest, without letting the wrongful tactics of parties get in the way.
3. The Court has adequately justified the decision by providing 14 instances which in Court's opinion have been a part and parcel in delaying justice in the Rose Valley Group's money laundering case (Para 21).
4. Furthermore, the law has been carefully interpreted by the ED, as it also provided an exception available in Section 436A of Cr.PC. The issues have been completely catered to, which can be seen by Court's direction to Trial Court to frame charges at the earliest.

CONCLUSION, SUGGESTIONS AND IMPACT

After careful analyzing of the facts, issues and contentions, the following can be inferred:

- No, bail was not granted even after presence of delay in framing charges considering the level of economic offence that was committed.
- No, the contention that the accused has completed one-half of the maximum punishment prescribed under PMLA was also brushed aside on similar grounds and the use of manipulative tactics by the accused and others.

SUGGESTIONS:

“The only way to stop the flow of this dirty money is to get tough on the bankers who help mask and transfer it around the world. Banks themselves don't launder money, after all: people do.”- *Robert Mazur*,

There is no one single “success mantra” when it comes to wiping off money laundering practices and it cannot happen in one go. There are innumerable ways that might facilitate in curbing the amount of such transactions and some of these are:

- **Need of a landmark judgment:** To set a strict precedent for money laundering laws in India, the judiciary must also keep a closer watch on money laundering cases. This will facilitate instilling fear in people who indulge in such practices. As in the present case, the denial of bail even after the time in custody can be considered a strict measure to imply that there will be no tolerance for such offences.
- **Functioning of enforcement agencies:** The large number of cases burdens enforcement bodies like the Enforcement Directorate(ED), and greater productivity is a pressing need in India. To address the above issues, legislative convergence in the functioning of India's compliance and investigation agencies is needed. From a cost and performance standpoint, this can prove really effective.
- **Strengthening KYC Norms:** KYC norms can help in identification of the culprits, provided that these norms are followed strictly.
- **Advanced Technology:** Banks should provide sophisticated and stable computer systems that can track anomalies and prevent hacking attacks.

IMPACT:

Money Laundering is one of the biggest parasites that is paralyzing several economies at the present and therefore should be dealt with using strict provisions. Despite the presence of anti-money laundering legislations in India as well as across the globe, the result is far from satisfactory. However, recently there have been stern decisions by the judiciary for example the conviction of Arun Mukherjee, co-accused in the Group’s money laundering case and sentencing him for the maximum sentence i.e. 7 years along with a fine of Rs. 2.5 lakh, implies an improvement in the area.

Moreover, the decision in the present case of rejecting bail and highlighting the wrongful tactics adopted by the accused is a ray of hope of betterment and strict measures to be taken in similar cases.

REFERENCES

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