

ABA of Mr. Kailash Agarwal, Director of NSEL's biggest Defaulter, dismissed in Ludhiana Court

Mr. Kailash Aggarwal is the Director of ARK Imports Pvt. Ltd., one of the largest defaulter in NSEL with an outstanding amount of Rs. 719.21 Crores due & payable to NSEL.

Earlier, Hon'ble MPID court had cancelled his bail on violating the bail conditions imposed upon him vide its order dated 2.12.2020. Mr. Kailash Aggarwal had disposed-off some of the EOW attached assets without the permission of the MPID Court and hence EOW filed a bail cancellation application against Mr. Kailash Aggarwal which got cancelled.

Further, being aggrieved by the order dated 02.12.2020, Mr. Kailash Aggarwal approached the Hon'ble High Court and filed a Criminal application no. APL/516/2020 dated 14.12.2020 for quashing & setting aside the order dated 02.12.2020 passed by the Hon'ble MPID court. The said application was allowed by the Hon'ble High Court vide order dated 17.12.2020 & sought interim protection. The matter is pending before the Hon'ble court.

Simultaneously, The Enforcement Directorate (ED) had also moved a complaint against Mr. Kailash Aggarwal for fraudulently selling off the properties which were also attached by ED. The Directorate had attached various land parcels of ARK Imports Pvt. Ltd. under the provision of PMLA 2002 vide provisional attached order no. 11/2014 dated 28.07.2014.

The Director of ARK Imports, Mr. Kailash Aggarwal was very well aware that these properties were attached by the Investigation Agencies and still took undue advantage & sold the properties in connivance with the Sub Registrar, Dehlon District, Ludhiana, Punjab. The said sale is gross abuse of law and in complete violation with the provisions of the PMLA Act.

At the same time, Mr. Kailash Aggarwal had also applied for his Anticipatory Bail Application (ABA) in the court of Dr. Ajit Atri, Additional Sessions Judge, Ludhiana against the complaint filed by ED under the provisions of PMLA Act.

The Hon'ble Court dismissed the ABA of Mr. Kailash Aggarwal vide its order dated 09.06.2021.

**IN THE COURT OF DR. AJIT ATRI, UID NO. PB0440,
ADDITIONAL SESSIONS JUDGE, LUDHIANA**

Case Details	
Case Type	BA
Case Reg. No.	BA/4426/2021
Case Code No.	PBLD01-010065-2021
Filing No.	BA/9561/2021
Date of Decision	09.06.2021

Kailash Aggarwal aged about 73 years son of Babu Ram Aggarwal resident 3301/2, Gurdev Nagar, Ludhiana.

... .. Applicant.

Versus

State of Punjab

Application under section 438 Cr.P.C for the grant of anticipatory bail to applicant in case FIR No.93 dated 28.05.2021 under Sections 420/421/465/467/468/471 IPC, P.S. Dehlon, District Ludhiana.

Argued by - Mr. A.K. Shori, Advocate for the applicant.
Mr. Dinesh Kumar, Additional PP for the State assisted by Mr. Ritesh Mohindra, Advocate.

ORDER

- 1- This order of mine shall dispose of bail application under Section 438 Cr.P.C for grant of anticipatory bail to the applicant.
- 2- Notice in the bail application was issued and the State has produced the record.
- 3- It has been argued by the ld. counsel for the applicant-accused that the signatures on the sale deed are not denied by the applicant.

(Dr. Ajit Atri UID No. PB0440)
Addl. Sessions Judge, Ludhiana.
Dated : 09.06.2021.

Whether the sale deed has been executed rightly or wrongly shall be matter of trial. The allegations will only be to the effect that it could not have been sold in view of the attachment order qua the property in question. The attachment itself could not continue beyond the period of one year and hence no offence is made out against the applicant. It is a case of documentary evidence and the effect of executing the sale deed shall be matter of trial. At the most, the FIR could have been by the purchaser of the property and not from the Enforcement Directorate. Moreover, all the proceeds of sale deed have been taken into possession. No recovery is to be effected in the case. If at all there is any violation of the attachment order or any kind of undertaking, the applicant may be proceeded with contempt of court and not with the FIR. The applicant is willing to join the investigation. The ld. counsel for the applicant replied upon the judgment in case of **Seema Garg Vs. Deputy Director 2020(2) R.C.R. (Criminal) 701.**

4- On the other hand, the ld. Additional PP, has vehemently argued that the complainant has been cheated by the applicant. There was specific attachment order on the property and an undertaking had also been given in the Court that no charge shall be created on the property. The liability to be discharged was to the tune of Rs.719 Crore. There is connivance of all the accused in the case and 22 registration deeds have been executed. A forged declaration was also executed with regard to the status of the property. The custodial interrogation of the applicant shall be

required in the case.

5- I have heard the ld. counsel for the applicant, ld. Addl. PP for the State and have gone through the file.

6- As per version of the prosecution case, the present case has been registered on the basis of the complaint moved by complainant Ram Dixit, Assistant Director, Directorate of Enforcement, Mumbai Zonal Office-1, wherein he alleged that ECIR No. 14/2013 was registered at Mumbai under the provision of Money Laundering Act, 2002. The Directorate had attached various land parcels in the matter of National Spot Exchange Ltd. & Ors. under the provision of PMLA 2002 vide provisional attached order no. 11/2014 dated 28.07.2014. Subsequently, the said attachment order was adjudicated and confirmed by the Adjudicating Authority of PMLA 2002 vide order dated 08.12.2014. Those properties, after the attachment/ confirmation, have become the properties of the government of India. These properties were derived from the crime trailed to M/s ARK Import Pvt. Ltd. and Kailash Aggarwal, who is director of said firm, had utilized the said proceeds of crime for purchasing the land parcels in the name of M/s Genex Infratech Ltd. and M/s Genex Polyfab Ltd. companies under his beneficial control. The Directorate had filed prosecution complaint before the Special PMLA Court at Mumbai, wherein Kailash Aggarwal and his above mentioned entities are arraigned as accused. The Special

PMLA Court, Mumbai had taken the cognizance of the said complaint and the matter is at trial stage. In that matter, certain complaint were received by the Directorate that the attached properties, held in the name of M/s Genex Infratech Pvt. Ltd., have been sold by Kailash Aggarwal in connivance with Rajni Aggarwal and Abhishek Kansal individuals/entities having market value of Rs.60-70 Crore. On this information received by the Directorate regarding transfer/sale of certain attached properties, the complainant along with accompanying officers had visited Ludhiana for verification of the veracity of the above mentioned complaints regarding transfer/sale of certain attached properties. The complainant along with the accompanying officers had visited the office of SDM Ludhiana (West) and SDM Ludhiana (East). During the inquiry with the officials, the complainant came to know that Kailash Aggarwal has fraudulently disposed off the properties attached by the Directorate. In this regard, Kailash Aggarwal had signed sale deeds with certain buyers and the payments were received by Ms/ Genex Infratech Ltd. in its account no. 201000368853 maintained with Indusind Bank. It was also noticed by the complainant that most of the funds have been encashed by Kailash Aggarwal and his accomplices by way of cash withdrawal at the first stage or withdrawn as cash after transferring to other accounts. The said cash was siphoned off with the help of market operators/hawala people through numerous accounts.

This manner of disposing off the confirmed attached properties by Kailash Aggarwal and his accomplices show their malafide intentions and their propensity to belittle the law. The complainant, with the help of the officials of the office of Tehsildar, Ludhiana (West) and Ludhiana (East), identified the said attached properties and thereafter, in compliance of the provisions contained under sub-section 4 of Section 8 of the PMLA 2002, the complainant had to take the possession of the aforesaid properties, which shall be at the disposal of the Enforcement Directorate till further order. Hence, the complainant had installed boards with government notices for the possession of subject land parcels lying at Village Ayali Kalan, Village Doraha, Village Hadaichan and Village Jassad all under the jurisdiction of Ludhiana district. However, on visiting the said land parcels on the very next day of installation of boards, the complainant observed that some of the boards installed at the properties at Village Ayali Kalan by the complainant had been removed by unknown persons. So, legal action has to be initiated against Kailash Aggarwal, Rajni Aggarwal, Abhishek Kansal and other persons, who have conspired and alienated the attached properties, which are the case properties and they obstructed the procedure of law.

7- The main stress of the argument of the ld. counsel for the applicant is that the attachment order could only last for one year and hence, no offence is made out. He has also relied upon the judgment in

case of **Seema Garg Vs. Deputy Director 2020(2) R.C.R. (Criminal) 701.**

The argument of the ld. counsel for the applicant is without any merit. It is not in dispute that there was attachment order confirmed by Adjudicating Authority for PMLA vide order dated 08.12.2014. The properties are alleged to be derived from the proceeds of crime trailed to M/s A.R.K. Import Pvt. Ltd. The matter has not concluded and it is at trial stage. The perusal of the order dated 08.12.2014 itself shows that the order was to continue during the pendency of proceedings relating to an offence under the Act. The applicant was very well aware of the order and does not deny the same. In these circumstances, the plea that the order was to last only for one year and not beyond has no force in it. The applicant does not take the plea that he ever challenged the said order or that it was modified at any point of time. The judgment in case of Seema Garg (supra) is not applicable to the present case as in the said case, it was the provisional attachment order, which was under challenge But in the present case, the provisional order has also been confirmed. Still further it is also the argument of the ld. Additional PP on assistance from Mr. Ritesh Mohindra, Advocate that an undertaking had also been given not to create any charge and/or any third party interest over the properties except with leave of the court in CM-1566-LPA-2019 in CWP 6889-2018. It is also the allegation in the FIR that most of the funds have been encashed by way of cash withdrawal by the applicant and his accomplices at the first stage or withdrawn as cash after transferring to other accounts. From the entire

allegations, the dishonest intentions are apparent on record. Inquiry had also been conducted in the case and during inquiry a report had been received from the Halqa Patwari of Village Jassad. As per the report, M/s Genex Infratech. Ltd. owns 81 Kanals, 18 Marlas land in village Jassad, out of which, area measuring 55 Kannal, 17.5 Marls have been sold by Kailash Aggarwal in the year 2020. Provisional attachment order was entered in the record vide rapat no.238 dated 22.03.2014. This entry was deleted by Recovery Officer Sh. Kashmiri Lal vide rapat no. 234 dated 20.03.2020. Now again provisional order no. 11/2014 dated 23.07.2014 has been entered in the record vide rapat no. 385 dated 17.08.2020. During inquiry another report had been received from Halqa Patwari of Village Ayali Khurd. According to his report, two properties attached by Enforcement Directorate have been sold and mutation no. 7662 and 7663 were entered which have been cancelled by the order of the court. The provisional order no. 11/14 dated 23.07.2014 and confirmation order 346/2014 dated 08.12.2014 passed by Enforcement Directorate, Mumbai were not entered in the record village Aylai Khurd, but provisional order was entered in the record village Jassad, which was later on deleted and is now entered again vide rapat no. 385 dated 17.08.2020. Kailash Aggarwal was aware about the order of Enforcement Directorate, Mumbai regarding the properties of M/s Genex Infratech Ltd. He admitted in the inquiry conducted regarding complaint bearing DR No. 1518661/Peshi/CP dated 12.03.2019 moved by Rohit Gupta that the original sale deeds of the properties of M/s Genex

Infratch Ltd. were in the possession of Economic Offences Wing, Mumbai and Enforcement Directorate, Mumbai. Kailash Aggarwal intentionally sold the properties attached by the Enforcement Directorate. All these facts when taken together will make out that the accused in the case have committed the offence with proper planning over a period of time. In view of the serious allegations against the applicant, the medical record and his age will not be coming to his help. Detailed investigation is required in the case to ascertain the involvement of other persons also.

8- The provisions of Section 438 of the Criminal Procedure Code are in the nature of an exception to general rule that an investigating agency must be given a free reign to arrive at the truth. The law is well settled that the provisions contained in Section 438, Criminal Procedure Code, relating to anticipatory bail are to be sparingly invoked and not in routine. Reference here can be made to judgment in case of **Avtar Singh Vs. State of Haryana, 2006 (2) RCR Criminal 152.**

9- Consequently, in view of the above discussion, the applicant is not entitled to the concession of anticipatory bail and hence, the bail application is dismissed. The file be consigned to record room after due compliance. The record be returned.

Pronounced in open court
09.06.2021.

(Deepak Sharma)

(Dr. Ajit Atri UID No. PB0440)
Additional Sessions Judge,
Ludhiana.

(Dr. Ajit Atri UID No. PB0440)
Addl. Sessions Judge, Ludhiana.
Dated : 09.06.2021.

Kailash Aggarwal Vs. State of Punjab

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Stenographer Gr.III

(Dr. Ajit Atri UID No. PB0440)
Addl. Sessions Judge, Ludhiana.
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CIS No. BA/4426/2021

CNR No. PBLD01-010065-2021

Kailash Aggarwal Vs. State of Punjab

Argued by - Mr. A.K. Shori, Advocate for the applicant.
Mr. Dinesh Kumar Additional P.P. for the State assisted
by Mr. Ritesh Mohindra, Advocate.

Record produced, perused and returned. Vide separate order of even date, the bail application of the applicant has been dismissed. File be consigned to record room after due compliance.

Pronounced in open court
09.06.2021.

(Dr. Ajit Atri UID No. PB0440)
Additional Sessions Judge,
Ludhiana.

(Deepak Sharma)
Stenographer Gr.III

(Dr. Ajit Atri UID No. PB0440)
Addl. Sessions Judge, Ludhiana.
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