

GAHC010182082023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2876/2023

SRI MOHET HOJAI
S/O- LATE THANGMAI HOJAI, RESIDENT OF VILLAGE- BOIDURA, P.O. AND
P.S. HAFLONG, DISTRICT DIMA HASAO, ASSAM

VERSUS

THE UNION OF INDIA
ENFORCEMENT DIRECTORATE, REPRESENTED BY THE ASSISTANT
DIRECTOR, SUB ZONAL OFFICE, GUWAHATI, BYE LANE NO.1, H/NO.20,
GUWAHATI-03

Advocate for the Petitioner : MR P CHOUDHURY

Advocate for the Respondent : SC, ED

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

16.10.2023

Heard Mr. D. Talukdar, learned counsel for the accused petitioner. Also heard Ms. A. Gayan, learned Standing Counsel, Enforcement Directorate.

2. By this petition under Section 439 Cr.P.C., the accused petitioner, namely

Mohet Hojai has prayed for grant of bail in connection with **Special PMLA Case No.03/2018** under Section **4** of the Prevention of Money Laundering Act, 2002 pending in the Court of learned Special Judge, Assam, Guwahati.

3. The scanned copy of order sheets of Special PMLA Case No.03/2018, as called for by order, dated 15.09.2023, is received.

4. An affidavit-in-opposition is filed by the respondent/Directorate of Enforcement.

5. Mr. D. Talukdar, learned counsel for the accused petitioner, submits that the accused has been languishing in judicial detention for 5 years 6 months although he and others were acquitted in Crl. Appeal. No.238/2017 setting aside the judgment and order of conviction in the connected NIA case No. 01/2009. Mr. Talukdar further submits that the trial in Special PMLA Case No.03/2018 has not commenced till date and as such, there is no possibility of early justice/disposal in the aforesaid case as the co-accused Redaul Hussain Khan has filed a criminal petition being Crl. Pet. No.334/2019, where a co-ordinate Bench of this Court by an order, dated 21.05.2019 has stayed further proceedings in the aforesaid criminal petition, which is extended from time to time. Therefore, Mr. Talukdar submits that for the aforesaid reasons and in view of Section 436A Cr.P.C., the accused may be directed to be released on bail, if deemed proper imposing conditions. In support of his submission, Mr. Talukdar has relied on the judgments rendered by the Hon'ble Supreme Court in *Union of India Vs. K.A. Najeed*, reported in (2021) 3 SCC 713 and in *Satender Kumar Antil Vs. C.B.I. & Anr.*, reported in (2022) 10 SCC 51.

6. Opposing the bail application, Ms. A. Gayan, learned Standing Counsel appearing for the E.D., submits that she has no comment to offer in connation with the acquittal of the accused in CrI. Appeal No.238/2017 preferred against the judgment of conviction of him in NIA Case No. 01/2009 and further, admitted that all the proceedings in Spl. PMLA Case No. 03/2018 has been stayed by a co-ordinate Bench of this Court in CrI. Pet. No.334/2019 since 21.05.2019. However, Ms. Gayan submits that the conditions specified in Section 45 of the PMLA Act are mandatory and it is further strengthened by the provisions of Section 65 and 71 of the said Act, which have an overriding effect on any other law including Section 439 Cr.P.C. Ms. Gayan has also submitted on the relevant factors, which are to be considered while granting or refusing to grant bail. Therefore, it is emphatically submitted that economic offence constitutes a class apart and such offences being threat to national economy, the bail application of the accused petitioner may not be considered favourably in the backdrop of nature of allegations and evidence collected against the accused petitioner.

7. The allegation against the accused petitioner are that during the year 2008 the present accused petitioner, the then CEM, N.C. Hills Autonomous Council entered into a criminal conspiracy with one R.H. Khan, the then Deputy Director, Social Welfare Department, Haflong and others and misappropriated huge funds of Social Welfare Department. The said R.H. Khan awarded supply orders worth lakhs of rupees, but no supply was made and Rs.13.5 Crores was directly siphoned from the bank account of Social Welfare Department since 2008-09. Accordingly, Special PMLA Case No.03/2018 was registered.

8. A perusal of the case record reveals that this Court by an order, dated 20.06.2022, passed in B.A. No. 785/2022 granted interim bail to the accused petitioner. In Para No.12 of the instant Bail Application it is averred that as the clearance from the Govt. of Assam could not be obtained during the limited period, as such, the accused/petitioner could not avail the benefit of the order passed by this Court.

9. The above referred interim order reads as extracted hereinbelow-

“Date-20.06.2022

Heard Mr. D Talukdar, learned counsel for the accused petitioner. Also heard Ms. A Gayan, learned Standing Counsel for the respondent/Enforcement Directorate.

*2. By this petition under Section 439 CrPC, the accused petitioner, namely, **Mohet Hojai** has prayed for bail in connection with **Special PMLA Case No.3/2018** (as defined u/S 3 of PMLA and Punishable u/S 4 of the Prevention of Money Laundering Act, 2002 (‘PMLA’ for short) pending before the learned Special Judge, Assam at Guwahati.*

3. The scanned copy of the case record along with copy of the Judgment and Order passed in NIA Special Case No.01/2009, as called for, is placed before the Court.

4. Mr. D Talukdar, learned counsel appearing for the accused petitioner, submits that the accused has been detained in jail in connection with the instant case being Special PMLA Case No.03/2018 and Special PMLA Case No.01/2015 although he is entitled for annual leave for serving out the life imprisonment in connection with sentence passed in NIA Special Case No.01/2009. Mr. Talukdar further submits that the accused has been languishing in jail in connection with the instant case for more than 3 years since 21.04.2018, without commencement of trial in the case, where further investigation is not completed. Therefore, Mr. Talukdar, learned counsel, submits that the accused may be granted at least interim bail, if not a full term bail so that he can avail the aforesaid leave entitlement.

5. Vehemently opposing the bail application, Ms. A Gayan, learned Standing Counsel for E.D., has drawn attention to the grounds cited in the Affidavit-in-opposition and submits that in the instant case involving siphoning of approximately Rs.13.50 Crores of the North Cachar Hills Autonomous Council (‘N.C.H.A.C’ for short) is still in the further investigation stage. 6.

Ms. Gayan further submits that the investigation so far made reveals sufficient prima facie incriminating material against the present accused and others, who are named in the complaint for commission of the offence of money laundering as defined in Section 3 of the PMLA , 2002, for which they are punishable under Section 4 of the said Act.

7. Ms. Gayan also submits that the accused was the Chief Executive Member of the said Autonomous Council and as such, he has a deep political root in the Council area and in the backdrop of facts and circumstances, he may most likely to influence the witnesses relevant to the case.

8. Ms. Gayan referred to the mandatory rigors contained in Section 45 which is strengthened by Sections 65 and 71 of the PMLA in the matter of granting bail. Therefore, Ms. Gayan, learned Standing Counsel strenuously submits that considering the prima facie nature and seriousness of the materials and other factors including involvement of great public interest etc. in this case the bail application of the accused may be rejected.

9. I have given due consideration to the above submissions made by the learned counsel of both sides and perused records.

10. The prosecution case, in brief, is that the CBI, Anti Corruption Branch, Shillong registered a Criminal Case vide FIR Case No. RCSHG 2010 A 0003 dated 13.05.2010 under Section 120B, 409, 420, 471 of IPC Act and Section 13 (2) r/w 13 (1) (c) & (d) of PC Act against Shri Mohet Hojai, the then Chief Executive Member, North Cachar Hills Council, Assam, Shri RH Khan employee of Social Welfare Department, NC Hills, Assam, Shri Debashish Bhattacharjee, Proprietor of M/s MAA Trading, Loknath and M/s Jeet Enterprise & others during the year 2008 and entered into a criminal conspiracy among themselves and siphoned an amount of Rs.13.5 Crores directly from the bank Account of Social Welfare Department in the year 2008-09. Based on the aforesaid FIR, the Special (PMLA) Case No.3/2018 came to be registered in the Court of learned Special Judge, Assam, Guwahati and cognizance of the offence has been taken vide order, dated 24.01.2018.

11. A perusal of the records, it is revealed that the accused was convicted under Sections 120B of the IPC read with Section 17 of the PMLA vide the Judgment, dated 22.05.2017 and order, dated 23.05.2017 passed by the learned Special Judge, NIA, Assam and presently, he has been serving out the sentence, inter-alia, of rigorous imprisonment for life.

12. The records reveal that the accused petitioner was the CEM, NCHAC during the relevant period of siphoning of approximately Rs.13.50 Crores from the Social Welfare Department under the said Council.

13. It may be mentioned that a co-ordinate bench by an order, dated 21.05.2019, passed in Criminal Petition No.334/2019 further proceeding in the instant case was stayed and it is continued from time to time till date. Therefore, there is no progress in trial of the case since 07.06.2019 and presently pending at pre-charge stage. Some coaccused persons are already released on bail.

14. This court is conscious of the limitations imposed on grant of bail under Section 45 of the PMLA which are as extracted herein below:

“45 Offences to be cognizable and non-bailable.—(1) 4[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless---]

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

15. This Court is also conscious of the various relevant judicially settled factors that should be considered while granting bail viz. (i) nature and seriousness of offence; (ii) reasonable apprehension of the witnesses being influenced and evidence tampered with ; (iii) large interest of public or State; (iv) circumstances peculiar to the accused; (v) character of the witnesses; (vi) reasonable possibility of presence of accused not being secured during trial and (vii) similar other considerations which may arise when a Court is asked to admit accused on bail in non-bailable offences.

16. As per the certificate dated 21.03.2022 issued by the Superintendent, Central Jail, Guwahati vide Annexure V, the accused has been in judicial custody since 21.04.2018, that is, for 4 years 1 month 30 days in connection with the instant case, which is at appearance stage before consideration of charges.

17. Undoubtedly, the instant case is of serious nature of economic offence involving a large interest of the State. However, in view of pendency of the instant case, he has been deprived of the benefit of annual leave entitlement during the continuation of serving out the life imprisonment awarded against him and others in connection with Special NIA Case No.01/2009.

18. On the other hand as stated a above, there is also no commencement of trial of the case,

as stated above, due to grant of stay of its further proceeding and non-appearance of the co-accused persons in the case.

19. Therefore, in the absence of certainty in commencement of trial and completion of further investigation in the case at the earliest and prolonged detention of him in judicial custody, this Court is of the considered opinion that in order to enable him to avail the benefit of his annual leave, he may be granted the liberty of interim bail only.

*20. For the above stated reasons, it is provided that the accused petitioner namely, **Mohet Hojai** shall be released on interim bail of **Rs.50,000/- (Rupees Fifty Thousand)** with 02 (two) sureties of like amount to the satisfaction of the learned **Special Judge, Guwahati, Assam**.*

The above interim bail shall be subject to the following conditions:

(i) That the interim bail shall remain valid strictly for the period of Annual Leave admissibility of the accused in connection with Special NIA Case No.01/2009;

(ii) That out of the two bailors, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned trial Court shall return the original documents retaining legible scanned copy thereof on record for future reference;

(iii) That the accused petitioner shall not, directly or indirectly, make any inducement, 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 to any police officer; and

(iv) That the bail bonds may be considered and accepted after receipt of copy of Annual leave with specific period granted to the accused petitioner from the Superintendent, Central Jail, Guwahati.

21. Forward forthwith copy of this order to the Superintendent of Police, Dima Hasao district, Assam and Officer-In-Charge, Haflong Police Station as well as the Superintendent, Central Jail, Guwahati for information.

The bail application stands disposed of."

10. The above order contained an exhaustive analysis on various provisions of

the PMLA Act in the context of the facts of the present case and in the light of the provisions of Sections 65 and 71 of the said Act.

11. In Para No. 15 of *K.A. Najeeb (supra)*, the Hon'ble Supreme Court observed as under-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

12. In Para Nos. 63 and 64 of the judgment rendered in *Satender Kumar Antil (supra)*, the Hon'ble Apex Court held-

“63. Section 436-A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word “trial” will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436-A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However,

such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that "bail is the rule and jail is an exception" coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded."

13. The record shows that the accused has been in judicial custody as noted in the interim order in connection with the case since 21.04.2018, that is, for 5 years 5 months 26 days. On the other hand, further proceedings in the case has been stayed by order, dated 21.05.2019, which is still in force resulting in non-commencement of trial of the case. The accused has been apparently detained without trial, which cannot indefinitely be allowed to continue without assurance of effective speedy justice to him, who has already undergone one-half of the maximum period of imprisonment specified for the offences. Thus, it appears that the accused has been deprived of the right to liberty and access to speedy justice and trial enshrined under Article 21 of the Constitution of India and right to liberty of bail under Section 436-A Cr.P.C.

14. For the above stated reasons, it is provided that the accused petitioner namely, **Mohet Hojai** shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** with **02(two) sureties** of like amount to the satisfaction of the learned Special Judge, Assam, Guwahati, subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- ii) That the accused petitioner shall not directly or indirectly make any inducement, 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;

- iii) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

The bail application stands disposed of.

JUDGE

Comparing Assistant