

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8005 of 2023

Applicant :- Abid Ali

Opposite Party :- Assistant Director Directorate Of Enforcement

Counsel for Applicant :- Malik Faiyaz Ahmed, Amrendra Nath Tripathi, Ayodhya Prasad Mishra A.P. Mishra, Komal Prasad Tiwari, Rituraj Mishra

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant and Shri Rohit Tripathi, learned counsel for the respondent Enforcement Directorate and perused the record.
2. The present bail application has been filed seeking enlargement of the applicant on bail in Complaint Case No.41 of 2015 arising out of ECIR/08/VSI/2011/AD (NKD), Sessions Case No.125 of 2023, under Section 3/4 of the Prevention of Money Laundering Act, 2002 (in short 'P.M.L.A.'), Police Station Directorate of Enforcement, District Prayagraj.
3. Submission of the learned counsel for the applicant is that initially an ECIR No.41 of 2015 was filed against the applicant as an accused alleging that the applicant has committed the offence punishable under the Prevention of Money Laundering Act. It was also stated that

the proceedings under P.M.L.A. were initiated on the basis of the predicate offence which was Case No.557 of 2008 registered on 6.8.2008 at Police Station Dumariya Ganj under Section 489B and 489-C I.P.C. against the applicant and two other accused. It also appears from the record that the applicant and the co accused were arrested with fake Indian currency notes on 29.7.2008.

4. It is also informed at the bar that the applicant was ultimately convicted in the said case crime no. 557 of 2008. It also appears from the record that another case crime no.252 of 2008 was also registered under Sections 489-B and 489-C I.P.C. against four persons including the applicant. The said F.I.R. was lodged on 16.9.2008. It is also on record that the applicant was convicted in case arising out of the case crime no.254 of 2008. After the conviction of the applicant in the said two cases, the ECIR was filed against the applicant in the year 2015 proposing to try the applicant for the alleged commission of offence under the P.M.L.A.

5. For the sake of brevity, the details contained in the complaint are not being incorporated hereinunder.

6. Thereafter, a supplementary complaint was also filed on 17.12.2021 which was supplementing the allegations in the complaint case no.41 of 2015. In the said case, summons were issued and thereafter the applicant was arrested during the pendency of the said complaint case and is in

custody since 29.5.2023.

7. In short, the submission of learned counsel for the applicant is that in the predicate offence, after the conviction, the present ECIR was filed. He further argued that the applicant was never arrested by the Enforcement Directorate during the course of the investigation and apparently the applicant is cooperating with the investigation and thus there is no need for the applicant of being taken into custody during the pendency of the complaint. He further argued based upon the instructions that not even one witness has been examined so far and the applicant has suffered pre trial detention of more than one year as such the applicant should be enlarged on bail.

8. Learned counsel for the applicant has placed reliance on the judgement dated 16.5.2024 passed by the Hon'ble Supreme Court in the case of Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office : Criminal Appeal No.2608 of 2024 arising out of Special Leave Petition (Crl.) No.121 of 2024.

9. Learned counsel for the Enforcement Directorate opposed the prayer for bail by arguing that irrespective of the nature of allegations for grant of bail, it is essential that the test specified under Section 45 of the P.M.L.A. be followed. He further argued that the predicate offence against the applicant were of serious nature affecting the economy of the country and thus no leniency should be shown to the applicant while considering

his bail application. He further argued that the case laws relied upon by the learned counsel for the applicant would not be applicable in the present case inasmuch as in the said case, the Hon'ble Supreme Court was considering the anticipatory bail of the appellant. He however does not deny the fact that the applicant was not arrested during the stage of investigation by the Directorate of Enforcement.

10. In short, the submission of learned counsel for the Enforcement Directorate is that principles of law as laid down in the case of Tarsem Lal (supra) would not be to the benefit of the applicant who has applied for regular bail and is in custody.

11. Considering the submissions made at the bar, it is essential to note the salient features of the law as explained by the Hon'ble Supreme Court in the case of Tarsem Lal (supra). The Hon'ble Supreme Court was dealing with the case of the appellant who has been denied the benefit of anticipatory bail by the orders which were impugned before the Hon'ble Supreme Court. Hon'ble Supreme Court after noticing the scheme of the Code of Criminal Procedure as well as the provisions of P.M.L.A., observed as under (relevant paragraphs 9 and 10) :-

"9. Section 61 of the CrPC provides for the form of summons. Form No. 1 in the 2nd Schedule is the prescribed form of summons under Section 61 of the CrPC. For the sake of convenience, we are reproducing Form No. 1:

FORM 1

[See Section 61]

Summons to an accused person

To (name of accused) of (address).

Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of _____, on the ____ day of _____ Herein fail not. Dated, this day of , 20

(Seal of the Court)

Looking at the form of the summons, it is apparent that it is issued only to secure the presence of the accused before the Court to answer the charge. If the accused appears before the Court, there is sufficient compliance with the summons. Hence, the question of taking him into custody on his appearance before the Court pursuant to the summons does not arise at all.

10. We fail to understand the basis of the submission of the learned ASG that after an accused appears before a Special Court in compliance with the summons, he shall be deemed to be in custody. The object of issuing a summons is to secure the accused's presence before the Court. It is not issued for taking an accused in custody. An argument is made that once an accused appears before the Special Court, as provided under sub-Section (1) of Section 437, he has to apply for bail. For ready reference, we are reproducing subSection (1) of Section 437, which reads thus:

"437. When bail may be taken in case of non-bailable offence.-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper

so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this subsection without giving an opportunity of hearing to the Public Prosecutor."

(emphasis added)

On its plain reading, subSection (1) of Section 437 does not apply when an accused appears or is brought before a High Court or Sessions Court. A Special Court is appointed under subSection (1) of Section 43 of the PMLA, which reads thus:

"43. Special Courts.-

(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate, one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.-In this subsection, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2)....."

Section 44 (1)(d) provides that while trying a scheduled offence or offence under the PMLA, a Special Court shall hold the trial in accordance with the provisions of the CrPC as they apply to trial before a Court of Session. A Special Court is a Court of Session. Therefore, Section 437 will not apply when an accused appears before the Special Court after a summons is issued on a complaint under Section 44 (1)(b) of the PMLA.

12. Hon'ble Supreme further recorded the conclusion in the aforesaid judgement which is quoted as under :-

"23. Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a

warrant. Even in a case where the accused is on bail, a summons must be issued;

c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a nonbailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it.

While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of

nonappearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons.

While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."

12. In view of the law as explained and extracted above, by the Hon'ble Supreme Court in the case of Tarsem Lal (supra), what emerges is that the Hon'ble Supreme Court has explained that once the applicant has not been arrested during trial, as a normal course after the complaint is filed, the court would summon the accused and not issue warrant. It further emerges that after the summons are issued, on taking cognizance of the offence punishable under Section 4 of the P.M.L.A., on a complaint and the accused appears before the Special Court pursuant to the said summons, he shall not be treated as in custody and the Hon'ble Supreme Court further held that there is no necessity for such an accused to apply for the bail and the special court can at best direct him to file bonds in terms of Section 88 of the Cr.P.C. The furnishing of bonds on the direction of the special

court under Section 88 Cr.P.C. was also interpreted to hold that the same would not amount to grant of bail.

13. In view of the law as explained above by the Hon'ble Supreme Court in the case of Tarsem Lal(supra), it is difficult for this court to accept the argument of learned counsel for the Enforcement Directorate that the principles as laid down, would apply only to the cases of persons who apply for anticipatory bail and not in the case of persons who apply for regular bail after being arrested. The judgement of Tarsem Lal (supra) with regard to custody during trial is fully attracted to the facts of the present case.

14. In sum and substance, as per the Tarsem Lal's case (supra), there is neither any need to arrest the accused after the complaint is filed, specially in the cases of persons who were not arrested during investigation nor is there any need for such persons to apply for bail and are required to furnish bonds as may be directed by the special court.

15. Considering and following the law as explained above, a clear case for grant of bail is made out in favour of the applicant. I am not going into the question of validity of arrest by the special court after issuance of summons.

16. For the reasons recorded above, the application for enlargement of applicant on bail is ***allowed.***

17. Let the applicant **Abid Ali** be released on bail in Complaint Case No.41 of 2015 arising out of ECIR/08/ VSI/2011/AD (NKD), Sessions Case No.125 of 2023, under Section 3/4 of the Prevention of Money Laundering Act, 2002, Police Station Directorate of Enforcement, District Prayagraj on his furnishing a personal bond and two reliable sureties of Rs.50,000/- each to the satisfaction of the court concerned with the following conditions :-

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant 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 or tamper with the evidence.

Order Date :- 30.5.2024

Shukla