IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2335 OF 2014

Hasan Ali Khan. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. A.H.H. Ponda a/w. Mr. R.b. Dixit a/w. Ms. Priyanka Dubey a/w. Mr. Prashant Patil a/w. Mr. Nand Kishor a/w. Mr. Prateek Katewa i/b. Mr. P.R. Yadav, advocate for Applicant.

Mr. Anil Singh, ASG a/w. Ms. Rebecca Gonsalvez, advocate for Enforcement Dept.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 12, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned ASG for State.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein was arrested on 7th March, 2011 in PMLA Special Case No. 1 of 2011, which is pending before the Court at Mumbai. It appears from the record that the applicant

had approached the Hon'ble Apex Court by filing Special Leave to Appeal (Cri.) No. 6045 of 2014. By an order dated 22/9/2014, the Hon'ble Apex Court had disposed of the Petition for Special Leave to Appeal by directing this Court to consider the application. The Hon'ble Apex Court by an order dated 22/9/2014 had disposed of the Petition by making the following order :

> “Heard the learned Counsel for the petitioner and the learned Counsel on behalf of the respondent.
>
> In view of the directions already given in the order of this Court of three Judges Bench dated 5.9.2014 in the case of Bhim Singh v/s. Union of India and ors. and other connected matters, no further orders are necessary.”

3 In view of this, the applicant herein had filed an application seeking bail before the PMLA Court. The Special Court by an order dated 28th October, 2014 was pleased to reject the said application. Hence, the present application.

4 As on today, the applicant is seeking bail in view of the provisions under Section 436A of the Code of Criminal Procedure, 1973. The learned Counsel for the applicant has drawn attention of this Court to Section 3 and 4 of the PMLA Act. Section 3 of the PMLA Act defines the offence as follows :

> "3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [1][proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."

Section 4 of the Act contemplates as follows :

> 4. Punishment for Money-Laundering- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine [1][***]:
>
> Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the

words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

5 The learned Counsel for the applicant submits that the applicant in view of Section 436A of the Code of Criminal Procedure, 1973 is entitled to be enlarged on bail, since he has undergone more than half of the punishment, as contemplated for an offence under the Money Laundering Act.

6 The learned Counsel for the applicant further submits that Section 436A contemplates the proviso where further incarceration can be extended provided there is an application filed before the concerned Court seeking extension of further detention beyond period of half of the sentence, as contemplated for the said offence.

7 The learned ASG appearing on behalf of the prosecution vehemently opposed the grant of bail. It is submitted on behalf of the respondent that in the present case, the provisions of Section 436A will not be applicable and that the applicant herein would not be

entitled to any benefit under section 436A of the Code of Criminal Procedure, 1973.

8 Secondly, it is submitted that assuming that Section 436A is applicable, the applicant cannot take benefit of the said provisions in view of the fact that the applicant is being prosecuted for a scheduled offence in Crime No. 457 of 2010. According to the learned ASG, the punishment contemplated for offence punishable under Section 467, 468, 471 of the Indian Penal Code is with life imprisonment and hence, the provisions under Section 436A of the Code of Criminal Procedure, 1973.

9 The third submission of the learned ASG is that the applicant is being tried for an offence under Schedule-A and therefore, he is not entitled to be enlarged on bail.

10 The learned Counsel for the applicant submits that by an order dated 21st August, 2013, the applicant has been enlarged on bail by the High Court at Patna under Crime No. 457 of 2010.

11 Perused the order passed by the High Court at Patna. The Hon'ble Court has observed that the Petitioner is languishing in custody since 04.01.2013 in a case registered for the offence punishable under Sections 420, 467, 468, 471 of the I.P.C. and Sections 10(3)/12(1) of the Indian Passport Act. The Hon'ble Court has taken into consideration the fact that the investigation is completed and charge-sheet is filed. The Hon'ble Court has also considered that the applicant is being prosecuted at Bombay under the provisions of Prevention of Money Laundering Act. The Hon'ble Court has granted bail to the present applicant.

13 As against the second submission, the learned Counsel for the applicant submits that the very fact that the applicant has been enlarged on bail in scheduled offence, his further incarceration in the present case would not only be unwarranted, but it would be unjustified. That the order granting bail to the applicant by Patna High Court has attained finality in as much as it has not been challenged.

14 As far as the third submission is concerned, the learned Counsel for the applicant has submitted that no doubt the applicant would be tried for the scheduled offence by the Special Court at Bombay, however, as on today, the applicant is not seeking bail on merits. He has a right to claim bail under Section 436A of the Code of Criminal Procedure, 1973. It is further submitted that the punishment for a particular offence would relate to the date of incident, when it has taken place. On the date when the applicant was arrested under the provisions of PMLA, the offence was under Schedule-B. However, by virtue of amendment dated 15/2/2013, the offence is included under Schedule-A and therefore, no retrospective effect can be given.

15 In case of **Bhimsingh v/s. Union of India & ors. reported in 2014(10) SCALE 290**, the Hon'ble Apex Court had considered the provisions of Section 436A of the Code of Criminal Procedure, 1973 and had issued direction and guidelines to follow the mandate of section 436A of the Code of Criminal Procedure, 1973. It is a matter of record that the applicant has served more than half of the sentence

as contemplated for offence punishable under Section 3 of the Money Laundering Act and hence, the applicant would be entitled for grant of bail.

16 Since the Hon'ble Apex Court has observed that the case of the present applicant to be considered in view of the Judgment of the **Bhimsingh v/s. Union of India & ors. reported in 2014(10) SCALE 290** this Court is of the opinion that it would not be necessary to go into the merits of the matter. Hence, this Court is of the opinion that by virtue of Section 436A of the code of Criminal Procedure, 1973, the applicant is entitled to be enlarged on bail.

17 The abovesaid observations are prima facie in nature and are restricted to decide the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The learned Trial Court shall decide the same on its own merits in accordance with law uninfluenced by the above observations.

18 Hence, following order is passed :

ORDER

(i) The Application is allowed.

(ii) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 1,00,000/- with one or more local solvent sureties in the like amount.

(iii) The Applicant shall report to the office of the Director of Enforcement as and when called till the conclusion of the trial.

(iv) The Applicant shall inform his latest place of residence and mobile contact number, within one week from his release and/or change of residence or mobile details, if any, within a week prior to making changes to the Court seized of the matter and to the office of the Director of Enforcement, Mumbai.

(v) The Applicant shall not tamper with the evidence.

(vi) The Applicant shall not leave the jurisdiction of this Court except for the purpose of attending trials/cases/petitions in any other courts without the permission of the this Court ;

(vii) An undertaking to the aforesaid clauses (iii), (iv), (v) and (vi), shall be filed by the Applicant, in the Trial Court, within two weeks after his release ;

(viii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

19 The Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)