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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ BAIL APPLN. 1518/2017

Order reserved on 11th September, 2017
Order pronounced on 15th September, 2017

MRS SHIVANI RAJIV SAXENA ..... Petitioner

Through: Mr. Mukul Rohtagi, Mr. Dayan Krishnan, Mr. Haresh Jagtiani and Mr. Mohit Mathur, Sr. Advocates with Mr. Joshna Samuel, Mr. Manoj Pant and Mr. Rajat Agnihotri, Advs.

Versus

DIRECTORATE OF ENFORCEMENT & ANR ..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Ripu Daman Bhardwaj, CGSC, Mr. Kartik Rai, Mr. Vidur Mohan & Mr. Sahaj Garg, Advs. along with Mr. Naresh Malik, IO (ED) & Mr. Karun (AEO) for respondent no. 1

Ms. Meenakshi Chauhan, APP for respondent no. 2.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

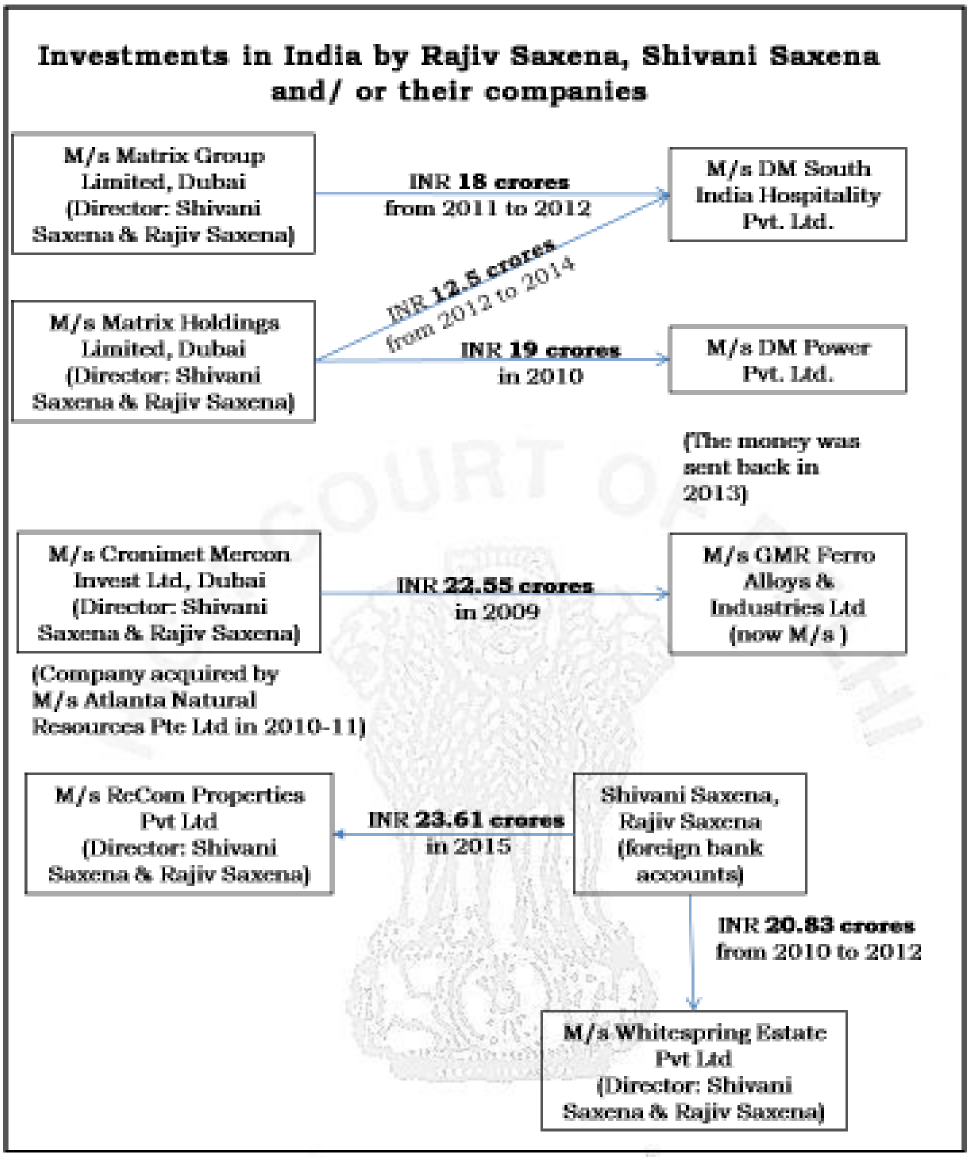
A.K. PATHAK, J.

1. By this application under Section 439 of the Code of Criminal Procedure, 1973 (the Code, for short) read with Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA, for short), petitioner has prayed for grant of bail to her in Enforcement Case ECIR/15/DLZO-1/2014.

2. Brief facts of the case are that Central Bureau of Investigation (CBI), registered a case vide RC 217 2013 A0003 dated 12th March, 2013 under Sections 7, 8, 9, 12, 13(2) read with Section 13(1)(d) of the PMLA read with Section 120-B and 420 IPC, in respect of a contract signed by Ministry of defence with M/s Augusta Westland International Limited, for supply of 12 numbers of AW 101 VVIP helicopters. It was alleged that the contract was awarded to the said company after changing the specifications of the helicopters, in order to favour the said company after taking huge commission/bribe. Subsequently, on the basis of said case, present ECIR case was registered for the offence under Section 3 punishable under Section 4 of the Act. During the investigation, it was revealed that total 70

million Euros was paid as 'kick backs' by the said company. Petitioner and co-accused Gautam Khaitan, Rajiv Saxena (husband of petitioner, based in Dubai) and others were instrumental in laundering the bribe money in India and abroad. They were the carriers of proceeds of crime. The money laundering was done through several consultancy contracts executed between the said company and other companies, namely, M/s Gordian Services Sarl, M/s Tunisia and M/s IDS Sarl, Tunisia etc. These companies further executed consultancy contracts with M/s Interstellar Technologies Ltd., Mauritius, M/s IDS Infotech Ltd., Chandigarh, M/s Aeromatrix Info Salutations Pvt. Ltd., India and others. M/s IDS, Tunisia received Euro 24.37 million from M/s Agusta Westland. M/s Interstellar Technologies Ltd., Mauritius had received 12.4 million Euros. These proceeds were then transferred to foreign locations including the companies owned by the petitioner and her husband, namely, M/s UHY Saxena, Dubai and M/s Matrix Holdings Limited, Dubai. Petitioner was partner/director in both the companies. Petitioner was arrested in Chennai on 16th July, 2017 and her custody remand was taken. During this period, her statement under Section 50 of the Act was recorded. She was confronted with the records but she gave evasive replies. She also avoided to furnish information regarding companies situated in Mauritius and Dubai with which she and her husband (co-accused) were associated. Petitioner did not cooperate in the investigation. Huge transactions were noticed in the HDFC Bank accounts of the petitioner in India. Petitioner did not disclose other banks accounts, which found reflected in her HDFC Bank account. Petitioner was also associated with M/s Matrix Group Limited, Dubai, M/s Matrix Holdings Limited, Dubai, M/s Cronimet Mercon Invest. Ltd., Dubai, M/s ReCom Properties Pvt. Ltd. and M/s Whitespring Estate Pvt. Ltd. as a director or otherwise.

3. As per the respondent, the proceeds of crime were routed to India by way of investments made by the petitioner, her husband and their companies, details whereof, as could be traced till now, are as under :-



4. Learned senior counsel has contended that petitioner is a woman aged about 53 years. She is a house wife and is also sick. Petitioner is unwell, which is evident from the remand application dated 21st July, 2017 filed by the respondent before the learned Special Judge. Orders dated 17th July, 2017, 21st July, 2017 and 26th July,

2017 passed by the learned Special Judge also show that petitioner is sick and needs medical attention. During the investigation, respondent was directed to provide necessary medical assistance to the petitioner vide aforesaid orders. Even now, petitioner is sick and is not being provided proper medical treatment in jail, which fact is evident from the order dated 4th September, 2017 passed by the learned Special Judge, wherein it is noted that there was no physiotherapist available in jail. Since petitioner is a woman and sick, rigours of Section 45(1)(ii) of the PMLA will not be applicable, in view of the first proviso to the said Section.

5. Petitioner is in custody since 16th July, 2017. Though, petitioner is Director in M/s Matrix Holding Ltd. but has no role to play in decision making process. Her husband is a chartered accountant and manages his profession and the companies. Petitioner is shown as an employee with a mere designation of Employee Director in M/s UHY Saxena, a partnership concern. Petitioner is also entitled to bail on parity since main accused Gautam Khaitan and other accused, namely, Ritu Khaitan, R.K. Nanda and J.B. Subramaniam have already been released on bail by the learned

Special Judge. Ritu Khaitan, R.K. Nanda and J.B. Subramaniam were not even arrested by the respondent. In the predicate offence, that is, FIR No. RC 217 2013 A 0003 main accused namely Air Chief Marshell (Rtd.) Shashinder Pal Tyagi, Gautam Khaitan and Sanjeev Tyagi have also been released on bail.

6. Per contra, learned ASG has contended that petitioner is actively involved in the offence of money laundering and cannot be treated separately for the purpose of bail, merely because she is a woman and sick. The discretion given to Court in the first proviso of Section 45 of the PMLA cannot be invoked to enure to the benefit of petitioner in the facts of the present case. Proviso can be pressed into service only in such cases where the accused, by virtue of a woman and sick, would justify her being treated in the same genre of the person enlisted in the proviso. Sickness of the petitioner is not serious in nature. She only needs physiotherapy, as is evident from the orders dated 23rd August, 2017 and 4th September, 2017 of the learned Special Judge. Physiotherapy is already being provided while she is in jail. There is nothing extraordinary in the condition of the petitioner warranting bail, inasmuch as, in more serious medical conditions bail

on the medical ground has been declined in Chhagan Chandrakant Bhujbal vs. Assistant Director, Enforcement Directorate and Anr. by the Bombay High Court vide judgment dated 16th June, 2016 passed in Bail App No. 1050/2016.

7. It is further submitted that the proviso is only an enabling provision which vests power in Court to exercise discretion in appropriate cases to the categories of persons as notified therein including woman or sick, but the same cannot be construed to mean that it would annihilate the main section which provides the twin rigours as its basic feature and commences with a non obstante clause "Notwithstanding anything contained in the Code of Criminal Procedure, 1973". It is submitted that Legislature, by placing the Non Obstante Clause in the PMLA, intends that bail in PMLA cases cannot be treated as a bail under the Code. Similar proviso finds mentioned in Section 437(1) of the Code and in the context of said proviso, Supreme Court in Prahalad Singh Bhati v. GNCT, Delhi (2001) 4 SCC 280 has observed that the persons as notified in the proviso should not necessarily be released on bail. Reliance has also been placed on Meenu Dewan vs. State MANU/DE/0021/2009 wherein also similar

view has been taken. It is further submitted that there is enormous evidence on record to show that petitioner is guilty and likely to repeat the offence. Petitioner is not similarly placed as Gautam Khaitan and others, who have their roots in India. Petitioner and her family are residents of Dubai for the last 25 years and if released she may flee to Dubai using porous borders of India. Petitioner's husband is still in Dubai and has not participated in the investigation despite notices being issued to him. By placing reliance on several documents collected during the investigation, learned ASG has contended that petitioner is not a house wife and, in fact, was actively associated with the affairs of the companies, as detailed in para 3 herein-above. She has done Masters in Finance.

8. Relevant it would be to refer and rely upon Section 45 of the PMLA at this stage, which reads as under :-

> "45. Offences to be cognizable and non-bailable. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule 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:

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by –

(i) The Director; or
(ii) Any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

9. A perusal of Section 45(1) of PMLA makes it clear that no person, accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule, shall be released on bail or on his own bond unless twin conditions as stipulated in Section 45(1) are satisfied. Firstly, Public Prosecutor has to be given an opportunity; secondly in case Public Prosecutor opposes the application the Court has to be satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. First proviso is exception to the above rule and vests power of discretion to the Court to release on bail the categories of persons, as notified in the proviso, which includes a woman or a sick person. I am of the view, that rigours of Section 45(1)(ii) of PMLA will not be applicable to the categories of persons, as mentioned in the proviso. In case it is held that conditions as laid in Section 45(1)(ii) shall also be attracted in respect of the persons, as notified in the proviso, in my opinion, proviso will be rendered nugatory, in as much as, an accused will otherwise be entitled to be released if he satisfies the condition laid down in section 45(1)(ii).However, in my view, the discretion as

envisaged in the proviso has to be applied depending upon the special circumstances attending to such categories of person and not as a matter of Thumb rule that all such categories of persons shall necessarily be granted bail.

10. Similar proviso finds mentioned in Section 437 (1) of the Code, which reads as under :-

> "(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 non- bailable and cognizable offence: <u>Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail it such person is under the age of sixteen years or is a woman or is sick or infirm: Provided further that the</u> 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."
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> (Emphasis laid)

11. In the context of proviso to Section 437(1) of the Code, a learned Single Judge of this Court in Meenu Dewan (Supra) has held that merely because the petitioner is a woman does not entitle her for bail under the proviso but the nature, gravity and seriousness of offence have also to be considered. In Prahalad Singh Bhati (Supra) also, Supreme Court has held thus "the condition of not releasing the person on bail charged with an offence punishable with death or imprisonment for life shall not be applicable if such person is under the age of 16 years or is a woman or is sick or infirm, subject to such conditions as may be imposed. <u>It does not, however, mean that persons specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. The proviso is an enabling provision which confers jurisdiction upon a court, other than the High</u>

Court and the Court of Session, to release a person on bail despite the fact that the there appears reasonable ground for believing that such person has been guilty of an offence punishable with death or imprisonment for life. There is no gainsaying that the discretion conferred by the Code has to be exercised judicially". (Emphasis laid)

12. In the present case, sufficient material has been placed on record to show, of course, prima facie, that petitioner is not a house wife. She is a highly qualified lady having completed Masters in Finance in the year 2002 from international university. She was actively involved in the affairs of the various companies by virtue of her holding responsible positions, inasmuch as, she was holding power of attorney in her favour from M/s Atlanta Natural Resources PTE. Ltd., Cronimet Mining GmbH, Matrix Holdings Limited etc. In the order dated 23rd August, 2017, learned Special Judge has recorded, on the basis of medical reports regarding health condition of the petitioner, that physiotherapy was being provided to her. It has been further noted that upon enquires made from the petitioner she submitted that she was getting proper medications and physiotherapy. Order dated 4th September, 2017 also indicates that jail authorities

have been directed to make necessary arrangements for physiotherapy of the petitioner. There is nothing on record to establish that petitioner is suffering from such serious ailments which necessitates her treatment in multi specialty hospital from specialist doctor. Petitioner can be and is being provided medical treatment in jail itself. Petitioner only requires physiotherapy which can easily be provided either in jail or in any other hospital affiliated to the jail or in the vicinity of the jail. In Chhagan Chandrakant Bhujbal (Supra), a prayer was made for releasing the petitioner on interim bail for three weeks by filing an application under Section 439 of the Code read with Section 45 of the PMLA but the same was declined, even though, he was diagnosed as a known case of Hypertension with Controlled Diabetes Mellitus with Bronchial Asthma with Obstructive Sleep Apnea with Root Canal treatment for 46, 47 with Periapical Osteltis 46 and other chronic ailments as mentioned in the clinical diagnostic report produced in Court.

13. The offence alleged against the petitioner falls under the category of economic offences which stand on a graver footing. These crimes are professionally committed by white-collared people which

inflict severe injuries on both health and wealth of the nation. Such offences need to be dealt with a heavy hand and releasing such accused on bail will affect the community at large and also jeopardize the economy of the country. The plea of parity is also not tenable in this case since the court did not consider, refer to and discuss the rigours of Section 45(1) of the PMLA. Petitioner has also failed to bring out any special circumstances for her release on bail being a woman or sick, keeping in mind the nature and gravity of offence, bail application is dismissed.

A.K. PATHAK, J.

SEPTEMBER 15, 2017
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