

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 286 OF 2018

Sameer M. Bhujbal

....Applicant.

vs.

Assistant Director

Directorate of Enforcement and anr.

....Respondents.

Mr. Vikram Chaudhri, Sr. Counsel a/w Sanjay Agarwal, Ishwariprasad Bagaria, Sajal Yadav, Dr. Sujay Kantawala, Karan Vyas, Sudarshan Khawase, Ms. Neha Ahuja, Mr. Harshit Sethi, Ms. Ruchita Patel, i/b Sajal Yadav and Shalabh K. Saxena, for the Applicant.

Mr. Anil Singh, ASG a/w H. S. Venegaonkar, Aditya Thakkar, D. P. Singh, Ms. Indrayani Deshmukh, Ms. Geetika Gandhi, Amogh Singh, Ms. Priyanvada Singhanian i/by S.P. Singh for Respondent No. 1.

Mrs. J.S. Lohokare, APP for the Respondent–State.

CORAM : A.S.GADKARI, J.

DATE : 6th June, 2018

PC.

1. This is an application under Section 439 of the Code of Criminal Procedure for bail by accused No.2-Mr. Sameer Bhujbal in PMLA Case No.2/2016 for the offence punishable under Section 3 read with 4 of the Prevention of Money Laundering Act, 2002 (PMLA Act for the sake of brevity).

2. Heard Mr. Vikram Chaudhri, the learned Senior Senior Counsel for the applicant and Mr. Anil Singh, the learned Additional

Solicitor General of India for respondent No.1 and Mrs. J.S Lohokare, APP for the State-Respondent No.2.

3. The applicant is an accused in CR No.35/2015 dated 8.6.2015 under Sections 13(1)(c), 13(1)(d) read with 13(2) read with 13(2) of the Prevention of Corruption Act, 1988 and under Sections 406, 409, 420, 465, 468, 471, 109 and 120B read with 34 of the Indian Penal Code in which after completion of investigation the police have submitted charge sheet and the same is now numbered as ACB Special Case No.10/2016. The applicant is also an accused in CR NO. I-69/2015 registered with EOW, Navi Mumbai under Sections 406 and 420 and 120(B) of the Indian Penal Code and under Sections 3,4,5,8 and 13 of the Maharashtra Ownership of Flats Act, 1963. The police after completion of investigation have submitted charge sheet in the same and it is now numbered as R.C.C. No.176/2016. The applicant has already been released on bail in the said two crimes by the trial Court.

4. ECIR No.7/2015 dated 17.6.2015 was registered by respondent No.1 in terms of scheduled offence corresponding to CR NO.35/2015 (Special Case No.10/2016). ECIR No.8/2016 dated 17.6.2015 was registered by respondent No.1 in terms of scheduled

offence corresponding to CR. No.69/2015 (RCC No.176/2016). A common prosecution complaint bearing No.2/2016 has been filed before the learned Special Court under PMLA Act in both ECIR No.7/2015 and ECIR No.8/2015.

The applicant came to be arrested in the present case i.e. in PMLA Case No.2/2016 on 1.2.2016.

5. Mr. Vikram Chaudhari, learned Senior Counsel appearing for the applicant submitted that the principal accused in the present crime namely Mr. Chhagan C. Bhujbal has been released on bail by this Court by its Order dated 4.5.2018. He submitted that, as per the prosecution the said accused was the principal accused and in view of his release on bail by an Order dated 4.5.2018 the applicant who has played lessor role in the present crime is entitled to be released on bail on the ground of parity.

He further submitted that in all the scheduled offences for which the present Complaint No.2 of 2016 is filed by the respondent No.1, the prosecution has cited total 594 witnesses and there are in all 81 accused persons. That, the total number of pages in all the charge sheets are approximately pages 57,102. He submitted that in the present case i.e. PMLA Case No.2/2016 prosecution has cited about

53 accused persons out of which there are about 10-companies. He submitted that all the accused persons in the present crime have been released on bail either by the Trial Court or this Court and therefore also the applicant is entitled to be released on bail. He therefore prayed that, the applicant may be released on bail.

6. Mr. Anil Singh, the learned Additional Solicitor General of India submitted that, as far as the Hon'ble Supreme Court in case of Nikesh Tarachand Shah vs. Union of India and another by its Judgment dated 23.11.2017 thereby striking down Section 45 of the PMLA Act, 2002 so far as it imposes further two conditions for release on bail to be unconstitutional is concerned, the same relates to scheduled offences or predicate offences mentioned in the Schedule. He submitted that, now the Government has brought an amendment in the Finance Act, 2018 which has come into effect from 19.4.2018 to Section 45(1) of the PMLA Act thereby inserting words 'under this Act' in Section-45(1) of the said Act.

He submitted that, in view of the said amendment, the original Sub Section-(ii) of Section 45(1) which imposes the said twin condition automatically stands revived and the said condition therefore remains on statute book. He submitted that, in view of the

amendment to Section 45 (1) of the PMLA Act which came into effect from 19.4.2018, the original Section 45(1)(ii) has to be inferred and treated as it still exists on the statute book and holds the field even as of today for deciding an application for bail by an accused under PMLA Act. He further submitted that by amending Section 45(1) of the Act and by inserting words 'under this Act' the judgment delivered by the Supreme Court in the case of Nikesh Shah (supra) has become ineffective and therefore the prayer for bail of the applicant has to be considered in view of the amended provisions of Section 45(1) of the PMLA Act. He further submitted that, there is presumption under Section 24 of the PMLA Act which has not been dispelled with by the applicant. That, the applicant is the Director of various companies of the said Armstrong group and it is the specific allegation against him that, he was indulging into actual laundering of money as contemplated under the various provisions of PMLA Act. He lastly submitted that the aforesaid facts are the distinguishing factors from the case of Mr. Chhagan Bhujbal and therefore, the applicant is not entitled to claim parity. He therefore, prayed that the present application may be rejected.

7. At the outset, it is to be noted here that, the Supreme Court in

the case of Nikesh Shah(supra) has in unequivocal terms held in Para 44 that 'we have struck down Section 45 of the Act as a whole'. It is further held by the Supreme Court in Para 45 that, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002 in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India.

8. The Supreme Court in the case of Barshi Municipal Council, Barshi, District Solapur vs. The Lokmanya Mills Limited, Barshi and another reported in 1972(2) SCC 857 has held that, when the Rule was struck down by this Court the effect was Rule could never be deemed to have been passed. The Validating Act has also not revived or resurrected the Rule [2(c) therein] and therefore, the position was that there was no charging provision for imposition of house tax on the Mills, Factories or Buildings connected therein.

9. It is to be noted here that, after effecting amendment to Section 45(1) of the PMLA Act the words “under this Act” are added to Sub Section (1) of Section 45 of the PMLA Act. However, the original Section 45(1)(ii) has not been revived or resurrected by the said Amending Act. The learned counsel appearing for the applicant

and the learned Additional Solicitor General of India are not disputing about the said fact situation and in fact have conceded to the same. It is further to be noted here that, even Notification dated 29.3.2018 thereby amending Section 45(1) of the PMLA Act which came into effect from 19.4.2018, is silent about its retrospective applicability.

In view thereof, the contention advanced by the learned A.S.G. cannot be accepted. It is to be further noted here that, the original Sub-section 45(1)(ii) has therefore neither revived nor resurrected by the Amending Act and therefore, as of today there is no rigor of said two further conditions under original Section 45(1)(ii) of PMLA Act for releasing the accused on bail under the said Act.

10. In view of the above, when there is no bar of twin conditions contained in original Section 45(1)(ii) of the PMLA Act, the present application has to be considered and decided under Section 439 of the Code of Criminal Procedure with or without conditions.

11. As noted earlier, the Co-ordinate Bench of this Court by its elaborate order dated 4.5.2018 has directed the principal accused namely Mr. Chhagan C. Bhujbal to be released on bail by imposing certain conditions. The record indicates that the role assigned to the

applicant in the present case is same and/or similar to that has been attributed to principal accused. Mr. Chhagan Bhujbal and therefore, in my considered view, the present applicant is entitled to be released on bail on the ground of parity. The record further indicates that except the present applicant all other accused persons are already enlarged on bail.

12. Apart from the said fact, it is to be noted here that, the applicant is on bail in the aforestated two scheduled offences. The maximum punishment for an offence under PMLA Act is seven years. The applicant in the present crime has been arrested on 1.2.2016 and till today he has already under gone more than one third of the total imprisonment as an under trial prisoner.

13. In view of the above, the applicant is entitled to be released on bail.

Hence, the following order.

a) Applicant shall be released on bail in Special PMLA Case No.2 of 2016 pending before the Special PMLA Court, Mumbai, on his executing PR bond in the sum of Rs.5,00,000/- with one or two solvent local sureties in the like amount.

b) Till the applicant compiles with the process of furnishing

sureties, the applicant is directed to be released on his furnishing cash bail of Rs.5,00,000/- (Five Lakhs) and the applicant shall comply with formalities of furnishing sureties within a period of six weeks from his actual release from Jail.

- c) Applicant shall submit his residential address alongwith proof of his staying there to Respondent No. 1, and in the event of change of address, shall update the same;
- d) Applicant shall surrender his passport with the investigating agency, if not already surrendered;
- e) Applicant shall remain present before the Special PMLA Court, Mumbai on the fixed dates without fail unless and until prevented for medical reason;
- f) The applicant shall not leave the jurisdiction of the High Court of Bombay at Mumbai without obtaining the prior permission of the Trial Court;
- g) Needless to state that Respondents shall be at liberty to take recourse as available under law, if applicant violates any of the conditions imposed, as aforesaid;

- h) The applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- i) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)