

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND STATE OF ANDHRA PRADESH**

MONDAY, THE TWENTY SECOND DAY OF JANUARY
TWO THOUSAND AND EIGHTEEN

:PRESENT:
THE HONOURABLE SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos. 256 & 345 OF 2018

CRL.P.No. 256 of 2018 :-

Between:

Ananda Kumr Bidarkar, S/o. Arun Kumr Bidarkar (A3)

.....Petitioner/Accused

AND

The State of Telangana, rep. by its Special Public Prosecutor,
Enforcement Directorate, High Court of Judicature at Hyderabad.

.....Respondent/Complainant.

Petition under Sections 437 & 439 of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed therein, the High Court may be pleased to direct release of the petitioner on Bail pending enquiry and trial in connection with ECIR No. 7 of 2017 of Hyderabad zone;

CRL.P.No. 345 of 2018 :-

Between:

Mahendra Kumar Khatri, S/o. Late Mohanlal Khatri

.....Petitioner/Accused

AND

The State of Telangana, rep. by its Special Public Prosecutor,
Enforcement Directorate, High Court of Judicature at Hyderabad.

.....Respondent/Complainant.

Petition under Sections 437 & 439 R/w. 167(2) of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed therein, the High Court may be pleased to release him on bail pending enquiry and trial arising out of ECIR No. 07/2017 on the file of the Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad;

The petition coming on for hearing, upon perusing the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri T. Niranjan Reddy, Advocate for the Petitioner in Crl.P.No. 256 of 2018 and of Sri Sreekanth Reddy Ambati, Advocate for Petitioner in Crl.P.No. 345 of 2018 and of Public Prosecutor(TS) on behalf of Respondent-State in both petitions, the Court made the following

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ORDER :-

These Criminal Petitions are filed seeking for grant of bail to the petitioners, who are accused Nos.3 and 1, in ECIR No.7 of 2017 of Enforcement Directorate, Zonal Office at Hyderabad, for the offences punishable under Sections 3, 4, 19(1) of the Prevention of Money Laundering Act, 2002 (for short, the 'PML Act'), based on Crime No.341 of 2017 on the file of Chandanagar Police Station, Hyderabad, registered for the offences Sections 120-B, 420, 465, 468 and 471 R/w.34 I.P.C.

2. The background facts of these cases are that the petitioners were apprehended by the Enforcement Directorate on 23.06.2017 and were subsequently released on bail by virtue of the separate orders passed in Crl.P.M.P. No.2490 of 2017 on 07.08.2017 and Crl.P.M.P. No.2530 of 2017 on 19.08.2017 by the Metropolitan Sessions Judge, Cyberabad at L.B. Nagar. Thereafter, the Enforcement Directorate went for cancellation of bail by filing Criminal Petition Nos.7503 and 8151 of 2017 and, this Court, on 27.11.2017, by virtue of the orders in the aforesaid Criminal Petitions, cancelled the bail of the petitioners; consequently, the petitioners herein surrendered on 30.11.2017. The reasons for cancellation of bail, by this Court, undisputedly, are that the lower Court did not consider the twin conditions incorporated in Section 45 of the P.M.L. Act; wherein, it is specified that the Court should satisfy that there are reasonable grounds for believing that the petitioners are not guilty of such offence and that they are not likely to commit any offence while on bail.

3. Learned counsel for the petitioners relies on a ruling of the Apex Court in Writ Petition (Criminal) No.67 of 2017, dated 23.11.2017; wherein the Apex Court declared Section 45 of the P.M.L. Act insofar as it imposed two further conditions for release on bail, to be un-constitutional, as it violates Articles 14 and 21 of the Constitution of India and a direction was made that all the matters pending before them, in which bail has been denied because of the presence of the twin conditions contained in Section 45 of the P.M.L. Act, have to go back to the respective Courts, which denied the bail.

4. Learned Public Prosecutor also submits that this Court, while cancelling the bail, has gone into the merits of the case and cancelled the bail. But the counsel for the petitioners submits that the merits of the case cannot be gone into now in these petitions, since the mandatory period of 60 days has elapsed and the petitioners would be entitled for automatic bail, due to the investigation being not completed within the above said period.

5. Learned counsel for the petitioners further makes an acceptable submission that the twin conditions under Section 45 of the P.M.L. Act do not apply to the offences falling under Part-B and the offences alleged against these petitioners falls under Part-A of the schedule.

6. Learned counsel for the petitioners relies on a ruling of the Apex Court in *Uday Mohanlal Acharya Vs. State of Maharashtra*¹; wherein, the Apex Court made several conclusions; out of which conclusions *i.e.*, conclusions 2 and 4 are relevant and they are extracted hereunder:

“2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorize detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

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¹ 2001 (5) SCC 453

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.”

7. More clarity comes from what is further said by the Apex Court. It said:

“Interpretation of the expression “*availed of*” if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other and, the accused has to be released on bail.”

8. By virtue of the above, the total period, starting from the day on which the petitioners were apprehended in the Crime, till the day on which the applications for grant of bail comes for consideration and has to be taken without considering the *interregnum* period, where the petitioners are at large during grant of bail and cancellation of bail.

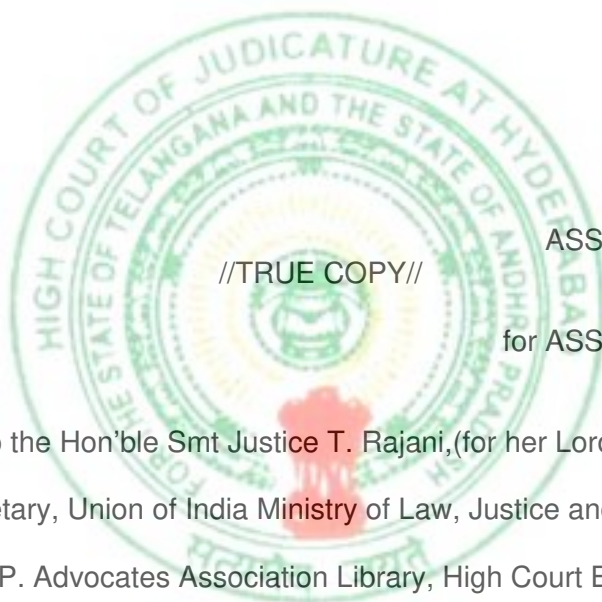
9. Learned Public Prosecutor further contends that since these Petitions are being filed under Section 439 of Cr.P.C., the prayer of the petitioners cannot be considered. But this Court is not in agreement with the said contention. Simply because there is a lapse on the part of the petitioners to mention the correct provision of law, it is not advisable to drive the petitioners to lower Court for seeking such relief, where, on the facts of the case, it is clear that the mandatory period has elapsed and investigation is not yet completed.

10. Hence, in view of the above, this Court considers that these are fit cases for grant of bail to the petitioners/accused Nos.3 and 1. Accordingly, the Criminal Petitions are allowed. The petitioners/accused Nos.3 and 1 are directed to be enlarged on bail, on condition of each of their executing a personal bond for a sum of Rs.40,000/- (Rupees forty thousand only) with two sureties for a like sum each to the satisfaction of the Metropolitan Sessions Judge, Cyberabad at L.B. Nagar. However, the plea of the learned Public Prosecutor that the petitioners are not cooperating with the investigation can be taken care of by directing the petitioners/accused Nos.3 and 1 to appear before the Enforcement Directorate officials thrice in a week *i.e.*, on every Monday, Wednesday and Friday in between 10:00 and 12:00 a.m.

11. Such an accused, who thus are entitled to be released on bail in enforcement of their indefeasible rights will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with them in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law, as laid down by the Apex Court in *Mohd. Iqbal Madar Sheikh Vs. State of Maharashtra*².

This procedure which is said to be the procedure to be followed in such case, by the Apex Court, in *Uday Mohanlal Acharya's* case (1 *supra*), has, however to be followed in this case also and the Magistrate shall follow the same.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.”



Sd/- V. DIVAKAR,
ASSISTANT REGISTRAR

//TRUE COPY//

for ASSISTANT REGISTRAR

To

1. One Fair Copy to the Hon'ble Smt Justice T. Rajani, (for her Lordships kind perusal)
2. 8 L.R. Copies.
3. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi.
4. the Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.
5. One C.D. Copy.
6. One spare copy.
7. The Metropolitan Sessions Judge, Cyberabad at L.B. Nagar.
8. The XI X Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad .
9. The Station House Officer, Chandanagar Police Station, Cyberabad.
10. The Superintendent, Central Prison, Cherlapally, Ranga Reddy District.
11. The Superintendent, Central Prison, Chenchalguda, Hyderabad.
12. Two CCs to Public Prosecutor(TS), High Court of Judicature, at Hyderabad(OUT)
13. One CC to Sri T. Niranjan Reddy, Advocate (OPUC)
14. One CC to Sri Sreekanth Reddy Ambati, Advocate(OPUC)

TKK

² 1996 (1) SCC 722

HIGH COURT

TR.J

DATE: 22-01-2018

BAIL ORDER

CRL.P. Nos. 256 and 345 OF 2018



RELEASE THE PETITIONERS
ON BAIL

**DRAFTED BY TKK
DT.23-01-2018**

HIGH COURT

TR.J

DATE: 22-01-2018



BAIL ORDER

CRL.P. Nos. 256 and 345 OF 2018

**RELEASE THE PETITIONERS
ON BAIL**