

20.09.2023

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Dismissed

C.R.M.(DB) No. 1629 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure R.C. Case No. 0102020A0019 dated 21.09.2020 under Sections 109/120B/420 of the Indian Penal Code read with Sections 7/9/11/12/13(1)(d)/13(2) of Prevention of Corruption Act.

And

In Re : Sehgal Hossain petitioner

Mr. Debashis Roy

Mr. Avik Ghatak

Mr. Soham De Dhara

....for the petitioner

Mr. Arun Kumar Maiti (Mohanty)

Mr. Anirban Mitra

Mr. Amajit De

..... for the State

Mr. Samrat Goswami

..... for Enforcement Directorate

1. Petitioner had preferred the bail application in April, 2023. On a number of occasions CBI sought adjournments to submit report with regard to developments during further investigation and involvement of the petitioner in the conspiracy of smuggling cattle across the international border. During hearing it came to light that the petitioner has been accused under PMLA Act and proceedings under the said Act are pending before the Special Court in Delhi.
2. In view of the aforesaid fact this Court considered it prudent to add Enforcement Directorate ('ED' for short) as a party respondent. ED was called upon to clarify whether the proceeding in the present case pending before the Special Court in Asansol has been transferred to Delhi in terms of Section 44(1)(c) of the PMLA Act.
3. On 13.07.2023 senior Counsel on behalf of the petitioner contended that the jurisdiction of PMLA Court to take cognizance of

the offences against the petitioner and others has been assailed before the Delhi High Court and the hearing is fixed on 27.07.2023. On such premise it was submitted on behalf of the petitioner the matter be adjourned. Accordingly, the matter was adjourned till 02.08.2023.

4. While on one hand the petitioner sought adjournment before this Court, on the other hand he approached the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No. 9901 of 2023, inter alia, contending there was delay in hearing of the bail proceeding.

5. Hon'ble Apex Court by order dated 22.08.2023 refused to entertain the Special Leave Petition. It observed as follows:-

“Our attention is invited to the order dated 13th July, 2023 passed by the High Court of Calcutta which records that the issue of territorial jurisdiction relating to the institution of PMLA proceeding in Delhi has been fixed for hearing on 27th July, 2023. The same order also records that as the issue of territoriality of the PMLA proceeding is pending before the Delhi High Court, the bail application filed by the petitioner was adjourned to 2nd August, 2023.

Now the bail application is ordered to be listed on 30th August, 2023. The High Court will have to decide the bail application on its own merits without being influenced by the pendency of the proceedings before the Delhi High Court. We are sure that if a request is made by the petitioner to hear the bail application on merits, the High Court will take up the bail application.

Therefore, in view of what is observed above, it is not necessary to entertain this Special Leave Petition.

While disposing of the Special Leave Petition, we record the statement of Mr. Huzefa A. Ahmadi, learned senior counsel appearing for the petitioner that ground 'R' stands deleted.”

6. Thereafter, bail application was taken up for hearing on 30.08.2023. Petitioner prayed for bail, inter alia, on the ground co-accused including Md. Emanul Hoque are on bail. In view of such submission, CBI prayed for time to differentiate the role of the petitioner vis-à-vis co-accused who are on bail. On the next date of hearing i.e. 12.09.2023 ED intimated the Court by order dated

06.09.2023, proceedings of the case has been committed to the PMLA Court in Delhi.

7. In the light of the aforesaid development learned Counsels for the CBI and ED argued this Court does not have jurisdiction to consider the bail application since the case is no longer within the territorial jurisdiction of this Court. It was prayed that maintainability of the petition be decided as a preliminary issue.

8. Per contra, learned Counsel for the petitioner contended bail application was filed in April, 2023 and had been adjourned on a number of occasions at the behest of CBI. The Hon'ble Apex Court by order dated 22.08.2023 has directed this Court to hear out the bail application on merits. Under such circumstances, subsequent order committing proceedings to Delhi would not impact the jurisdiction of this Court to entertain the application on merits.

9. In view of the aforesaid submissions and with consent of the parties, issue of maintainability of the bail application is taken up first.

10. Petitioner is a public servant and has been charged with various offences including offences under the Prevention of Corruption Act. Charge-sheet was filed before the Special Court at Asansol. Petitioner prayed for bail which was rejected by the said Court on 17.02.2023. Thereafter, he approached this Court for bail under Section 439 of the Code of Criminal Procedure. It may not be out of place to note even prior to filing of the bail application petitioner had been accused under PMLA Act and cognizance of such offences have been taken by the Special Court at Delhi. In view of his involvement in the PMLA case this Court called upon ED to clarify

whether the proceedings in this case have been committed to the PMLA Court in Delhi as per Section 44(1)(c) of the PMLA.

11. In rebuttal, petitioner contended they had challenged the territorial jurisdiction of the PMLA proceedings in the Delhi High Court and the hearing of the said case was fixed on 22.07.2023. On their prayer hearing of the matter was adjourned. At this stage, petitioner approached the Hon'ble Apex Court and the said Court by order dated 22.08.2023 directed this Court to hear out the bail application on merits without waiting for the decision of the Delhi High Court on the challenge thrown by the petitioner to the territoriality of PMLA proceedings. Thereafter, the matter was taken up for hearing.

12. During hearing, this Court was apprised by order dated 06.09.2023 proceeding in this case has been committed to the PMLA Court at Delhi. Commitment of the proceeding to the Special Court at Delhi in terms of Section 44(1)(c) of the PMLA Act is a subsequent development which was not before the Hon'ble Apex Court when the order dated 22.08.2023 came to be passed. This would be evident from the order itself. The order observes this Court to hear out the application on its own merits without being influenced by the pendency of the proceeding before the Delhi High Court.

13. Presently, the jurisdiction of this Court to hear the bail application on merits has been challenged on the ground of committal of proceeding from Asansol Court to the PMLA Court at Delhi and not on the premise of pendency of proceeding before Delhi High Court.

14. This issue is of seminal importance vis-a-vis jurisdiction of the High Court to hear the bail application. Section 2(e) of the Code defines High Court as follows:-

“2. (e) “High court” means,—

- i) in relation to any State, the High Court for that State;*
- ii) in relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;*
- iii) in relation to any other Union Territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.”*

15. Section 439 empowers the High Court to release a person on bail who is accused of an offence and is in custody.

16. High Court under section 439 CrPC may release the person on bail if the following conditions exist:-

- (a) The person has been accused of an offence and
- (b) He is in custody.

17. For the High Court to entertain a bail application either or both of these conditions must occur within its territorial jurisdiction. That is to say the High Court of the State within whose jurisdiction the person has been accused of an offence or is in custody or both may entertain and dispose of a bail application.

18. In the present case the petitioner was accused of predicate offences within the State of West Bengal and charge-sheet was filed against him before the Special Court of Asansol. Hence, he was entitled to seek bail before this Court. Presently, the said proceeding has been committed to the PMLA Court in New Delhi. We are informed that the petitioner is also in custody at New Delhi and not within the territorial jurisdiction of this Court. Thus, requisite pre-conditions to entertain bail application i.e. situs of criminal

proceeding or place of custody of the accused are not within the territory of this Court.

19. Jurisdiction of a Court is to be determined in the light of facts and circumstances which prevail at the time when the Court considers the bail application and not at the time of its institution. For example, if a lis is instituted before a Court which had territorial jurisdiction at the time of institution but due to change in law or otherwise lacks jurisdiction over the lis at the time of adjudication, the Court must refrain from deciding the lis. Admittedly, this Court does not have jurisdiction either over the proceeding in which the petitioner has been accused nor over the petitioner as he is not in custody within the territorial jurisdiction of the Court.

20. Accordingly, this Court is of the opinion in view of subsequent development viz. committal of the proceeding from Asansol Court to the PMLA Court in New Delhi under Section 44 (1)(c) of PMLA Act it is denuded of jurisdiction to dispose of the bail application on merits. The application is dismissed as not maintainable.

21. As a post script reason for delay in disposal of the bail application is noted. This was due to adjournments sought by the parties including the CBI who sought repeated adjournments to submit responses which this Court understands require to be vetted by appropriate authorities at Delhi. Needless to mention in a case of such nature involving deep rooted conspiracy between politicians, public servants and smugglers for illegally transporting cattle across the international border it is not advisable to deal with the bail

application without perusing the reports on developments during further investigation.

22. It is open to the petitioner to approach the jurisdictional court or the appropriate High Court to seek relief in accordance with law. This Court hastens to observe that it has not gone into the justification of the prayer of the petitioner to be released on bail and any observation made in that regard may not be treated as binding in subsequent proceedings.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)