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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 4138 OF 2023
IN
CRIMINAL REVISION APPLICATION (ST.) NO. 20625 OF 2023**

Sanjay Rajkumar Chhabriaa

.. Applicant

Vs.

Directorate of Enforcement,
Through Asstt. Director & Anr.

.. Respondents

.....

Mr. Vikram Nankani, Senior Counsel a/w Mr. Vibhav Krishna, Mr. Tahir Prande, Mr. .Anmol Bartaria i/b Dadhichi S. Mhaispurkar for the applicant

Ms. G.P. Mulekar, APP for the respondent – State

Mr. H.S. Venegavkar, Special Public Prosecutor a/w Mr. Aayush Kedia for the respondent no.1 – E.D.

Mr. Kuldeep Singh, I.O. present in Court

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

CLOSED ON : 12th DECEMBER 2023

PRONOUNCED ON : 21st DECEMBER 2023

P.C. :-

1. This is an application seeking condonation of delay in preferring a Revision Application, challenging an order dated 7th June 2022 passed by the Special Court under the Prevention of Money Laundering Act (for short “PMLA”), by which the said

Court permitted arrest and custody of the applicant from the custody of the Special Court of C.B.I. to the Court under the PMLA in connection with ECIR No. MBZO-I/03/2020 (**Exh.F**).

2. Heard Mr. Nankani, learned Senior Counsel for the applicant and Mr. Venegavkar, Special Public Prosecutor for respondent no.1 – E.D.

3. Mr. Nankani, learned Senior Counsel extensively argued on the merits of the impugned order without much emphasizing and explaining as to why there was such a long and inordinate delay in impugning an order of the PMLA Court.

4. I will, therefore, concentrate and focus only on the application seeking condonation of delay as the law of Limitation is indeed an important legislation, which is in furtherance of the sound public policy to put a quietus to the dispute or grievances of which resolution and redressal are not sought within the prescribed time. Delay cannot be and should not be condoned at the sweet will of the person who approaches the Court beyond prescribed time limit.

5. The existence of “sufficient cause” is a *sine qua non* for the exercise of the discretion under Section 5 of the Limitation Act. The party must satisfy the Court about the existence of “sufficient cause” for the delay. This is imperative. When no cause is shown or pleaded, it is impossible to construe a non-existence cause as a ‘sufficient cause’. Under Section 5 of the Limitation Act, what counts is not the length of delay but the sufficiency of cause.

6. This Court is vested with a discretionary power to be exercised on the sound judicial principles and not in arbitrary, vague and fanciful manner. The application seeking condonation of delay will have to be considered keeping in mind the aforesaid basic tenets of law.

7. At the outset, Mr. Nankani, learned Senior Counsel invited my attention to the impugned order dated 7th June 2022 passed by the Special Court, PMLA, below Exh.236 *inter alia* contending that the applicant had already preferred a petition under Article 32 of the Constitution of India in the Supreme Court impugning the said order. The Hon’ble Supreme Court is dealing with several petitions in that regard, wherein, at the request of the learned Counsel

appearing for the present applicant, the Supreme Court permitted to withdraw Application Nos. 216977 & 216987 of 2023 as the applicant herein sought permission to approach this Court. The applications came to be dismissed as withdrawn. The order reads thus :-

“ Learned counsel seeks to withdraw the application Nos. 216977 & 216987/2023 as he wishes to approach the High Court. He may do so in accordance with law.

The applications are dismissed as withdrawn.”

8. According to Mr. Nankani, the applicant was *bona fide* trying to secure his personal liberty before the Hon’ble Supreme Court from 12th August 2022 to 18th August 2023. He contends that the powers of this Court under Section 397 of the Cr.P.C. are wide enough so as to say that this Court can take *suo motu* cognizance by giving a liberal approach while considering the delay caused in preferring the Revision against the impugned order.

9. Mr. Nankani, learned Senior Counsel has placed reliance upon a judgment in the case of *Municipal Corporation of Delhi Vs. Girdharilal Sapuru and Ors. (1981) SCC 758* in order to substantiate his contention as regards condonation of delay. The

ratio laid down by the Supreme Court can be carved out from para 5 of the judgment which is extracted below :-

“5. It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was filed very much in time the requisite power of attorney of the learned Advocate on behalf of the petitioner was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore it is revisable under Section 397(1), Cr.PC and Section 397(1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We, however, do not propose to say a single word on ‘the merits’ of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.”

10. I am afraid, this ratio would not be of any assistance to the

applicant for the simple reason that the Hon'ble Supreme Court discussed scope of Section 397 of the Cr.P.C. which enables the High Court to exercise its powers of revision *suo motu*. A clear illegality was brought to the notice of the High Court. In such eventuality, the High Court could not have rejected the petition as time barred thereby perpetuating the illegality resulting into miscarriage of justice. It is held by the Supreme Court that the question whether a discharge order is interlocutory or otherwise, need not detain the Court as it is settled by the decision of the Supreme Court that the discharge order terminates the proceeding and, therefore, it is revisable under Section 397(1) of the Cr.P.C.

11. At first, this is not a revision of which *suo motu* cognizance has been taken by this Court. It is apparent that after having made several unsuccessful attempts before different forums, the applicant has approached this Court challenging the order passed by the Special Court. There is absolutely no illegality or miscarriage of justice. Above all, the impugned order dated 7th June 2022 being an interlocutory order is not revisable in view of Section 397(2) of the Cr.P.C. The judgment of the Supreme Court, therefore, can be distinguished accordingly.

12. The argument of Mr. Nankani, learned Senior Counsel that applicant has been prosecuting multiple remedies available to him and, therefore, delay has caused, cannot be termed to be a 'sufficient cause' to condone the delay.

13. Mr. Nankani, learned Senior Counsel has placed reliance mainly on two recent decisions of the Supreme Court namely; (i) *Pankaj Bansal v. Union of India & Ors. 2023 SCC OnLine SC 1244* and (ii) *V. Senthil Balaji v. State, 2023 SCC OnLine SC 934*.

Essentially, the ratio laid down by the Supreme Court in the aforesaid decisions is concerning the merits of the case especially, decision on Section 19 of the PMLA. The ratio laid down in the said decisions need not be gone into for the reason that what is required to be considered now is only an application seeking condonation of delay. Nevertheless, I shall refer the judgments in the later part of this order.

14. *Per contra*, Mr. Venegavkar, learned Special Public Prosecutor, at the outset, contended that the application seeking condonation of delay itself is so vague and casual, in the sense, there is absolutely no whisper as regards 'sufficient cause' nor it has been stated as to

how many days delay has occurred in preferring the Revision Application. A bare look at the application reveals the said truth that the application is not only silent as regards 'sufficient cause' but also there is absolutely no whisper as to why there has been such a long and inordinate delay.

15. Mr. Venegavkar, would argue that not only there is no explanation about such a long and inordinate delay but, there is no whisper even for a single days delay.

16. The third important aspect brought to the notice of this Court is that a regular Bail Application has already been filed by the applicant before the Special Court, in which the arguments are heard and is reserved for order.

17. The fourth point raised by Mr. Venegavkar is that the first remand of the applicant was on 7th June 2022; the second remand was on 14th June 2022 and the third remand was on 17th June 2022. If at all the applicant was so vigilant about his fundamental rights in view of Article 21 of the Constitution of India, he should have immediately brought the fact of his alleged illegal detention to the notice of the Special Court as the applicant's case mainly revolves

around the fact that the respondent had not strictly complied with the provisions of Section 19 of the PMLA. Mr. Venegavkar, therefore, would submit, as rightly so, that the application seeking condonation of delay is not only without indicating any 'sufficient cause' but is not even *bona fide* in the attending facts and circumstances.

18. One more important and glaring aspect has been brought to my notice by Mr. Venegavkar is that the applicant had moved an application under Section 167(2) of the Cr.P.C. before a Single Bench of this Court, which was rejected on 9th October 2023. It has not been challenged and has, therefore, attained finality. After rejection of that application, the present Revision has been preferred on 27th October 2023.

19. It is, thus, apparent that the applicant has been taking chances before different forums. Since the applicant realized that he may not get the relief, he approached this Court, that too after 416 days by impugning the order passed by the Special Court on 7th June 2022.

20. As already stated, merits of the impugned order are not

required to be considered, yet, as Mr. Nankani has placed reliance on the judgment in the case of *Pankaj Bansal* (supra) wherein the Hon'ble Supreme Court discussed the scope of Section 19 of the PMLA, it would be apposite to extract the relevant part, which reads thus:-

“16. It was pointed out that Section 167 Cr.P.C. is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.”

21. The crux is that if there is non-compliance of the mandate of Section 19 of the PMLA, it would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the PMLA of 2002, for such non-compliance.

22. Similarly, Mr. Nankani, learned Senior Counsel has also invited my attention to another judgment of the Supreme Court in case of **V. Senthil Balaji** (supra) wherein the Supreme Court has reiterated the scope of Section 19 of the PMLA. Paragraph 39 of the judgment reads thus:-

“39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorized Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.”

23. Mr. Venegavkar, on the other hand, invited my attention to para 39 of the judgment in the case of *Pankaj Bansal* (surpa). The relevant part of para 39 is extracted below :-

“39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it

*would be necessary, **henceforth**, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law.”*

24. Mr. Venegavkar, Special Public Prosecutor, has rightly invited my attention to the word ‘**henceforth**’ i.e. 3rd October 2023 – the date on which the judgment in the case of *Pankaj Bansal* (supra) came to be delivered. It is, therefore, obvious that the applicant cannot be heard to say that his arrest was illegal and, therefore, he can seek bail in light of the fact that the first date of his remand was 7th June 2022.

25. Mr. Venegavkar, has also invited my attention to a recent judgment of this Court dated 7th November 2023 in the case of *Naresh Goyal Vs. Directorate of Enforcement & Ors.* [Criminal Writ Petition No. 3162 of 2023]. Para 8 of the said judgment reads thus:-

*“8. Mr. Venegavkar submitted that neither is the arrest of the petitioner ex-facie illegal, nor are the remand orders passed mechanically, routinely or without application of mind and that the same is evident from the remand orders passed by the Special Court. Mr. Venegavkar further submitted that reliance placed on **Pankaj Bansal** (supra) is misconceived,*

*inasmuch as, the words used in the said judgment in para 35 are that “**henceforth**” that a copy of such written grounds of arrest is furnished to the arrested person, as a matter of course and without exception”. Emphasis was laid down on the word ‘**henceforth**’ used in para 35 of the said judgment. He submitted that the law holding the field before **Pankaj Bansal (supra)**, was that of **Chaggan Bhujbal v. State of Maharashtra (2016) SCC OnLine Bom 9938** and that the petitioner was informed and served on the grounds of arrest. Mr. Venegavkar produced before us, a copy of the grounds of arrest served on the petitioner, duly signed by the petitioner. As far as merits are concerned, Mr. Venegavkar submitted that whether or not there was a stay on the predicate offence, cannot be gone into, in view of the maintainability of the petition itself, which seeks a writ of habeas corpus.”*

26. It can thus, be seen that application seeking condonation of delay is without any ‘sufficient cause’ and is without any *bona fide*.

27. Consequently, the Application stands dismissed.

(PRITHVIRAJ K. CHAVAN, J.)