

04.01.2024  
tkm/ct 28  
sl no. 56

**C.R.M. (DB) 3181 of 2022**

In Re : An application for cancellation of bail under section 439 (2) of the Code of Criminal Procedure and 482 of the Code of Criminal Procedure

And

In Re : Enforcement Directorate

..... petitioner

Mr. P Edulji  
Ms. A Pandey

..... for the petitioner

Mr. Ayan Bhattacharya  
Mr. Pawan Kr. Gupta  
Ms. Sofia Nesar  
Mr. S Sett

..... for the OP

1. Enforcement Directorate has assailed order dated 18.5.2022 passed by the learned judge granting bail to the opposite party-accused.
2. Mr. Edulji for the Enforcement Directorate contends the learned judge failed to consider the gravity of offence which relates to charges of money laundering by the director of a chit fund company, namely, MPS group of companies. He also contends that the statutory bar under section 45(1) had also not been considered.
3. Mr. Bhattacharya for the opposite party-accused submits his client is an old and ailing person. Learned judge noted he was suffering from various ailments like high blood pressure and diabetes. He was in custody for more than three years and three months and had almost covered half of the maximum sentence prescribed in law.
4. We have considered the materials on record in the light of the submissions made at the bar. Petitioner was a director of

MPS group of companies which had floated illegal money circulation schemes causing wrongful loss running to over Rs.1000 crores to innocent depositors. Allegations are very grave. Section 45(1) of PMLA Act, inter alia, imposes an embargo on the grant of bail unless the court is satisfied that there are reasonable ground of believing that the accused is not guilty of the offence and shall not commit any offence while on bail. Examining the order of bail we note the opposite party-accused was enlarged on bail primarily on the ground of health and the protracted detention suffered by him. The judge noted that the opposite party-accused was aged around 67 years and suffering from high blood pressure and diabetes. It may not be out of place to note that proviso to section 45(1) states that a sick or infirm person may be released on bail.

5. At the outset we may record the nature of chronic ailments i.e. high blood pressure/diabetes recorded in the order do not call for invocation of the aforesaid proviso in favour of the opposite party-accused. Be that as it may, what is more pertinent is the protracted period of detention suffered by the accused i.e three years, three months and fourteen days which is almost half of the sentence imposed on the petitioner. In *Vijay Madanlal Choudhury & Ors. vs. Union of India & Ors.*<sup>1</sup> the apex court held prayer for bail under section 436A Cr.P.C on the ground of delay is not

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<sup>1</sup> 2022 SCC OnLine SC 929

circumscribed by the restrictions under section 45(1) of the PMLA Act. It is true petitioner was released on bail 2½ months prior to undergoing incarceration for half of the maximum period of detention.

6. It would be a matter of splitting hairs if the petitioner is directed to be re-arrested and suffer the remaining period of 2½ months and seek bail afresh in terms of section 436A Cr.P.C. Trial has not commenced and there is no possibility of its conclusion in the near future. There is also no allegation that the petitioner has misused liberty or indulged in similar illegal activity while on bail.
7. Under such circumstances, we find no justification to cancel the bail of the petitioner.
8. Application for cancellation of bail is dismissed.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**