



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1901 OF 2024**

Naresh Goyal,
aged 75 years old,
72, Jupiter Apts., Anstey Road,
Off. Altamount Road, Mumbai – 400 026

... Applicant

versus

1. Directorate of Enforcement,
Mumbai Zone II Office, Ceejay House,
Unit Nos.- 301 – 303, 402-403,
Dr. Annie Beasant Road, Worli,
Mumbai – 400 018.

2. State of Maharashtra,
Through the Public Prosecutor.

... Respondents

Mr. Harish Salve, Senior Advocate with Mr. Aabad Ponda, Senior Advocate with Mr. Ameet Naik, Mr. Abhishek Kale, Ms. Yugandhara Jha, Mr. Harish Khedkar, Mr. Aditya Ajgaonkar, Mr. Parikshith K., Ms. Anjali Sharma i/by Naik Naik and Co., for Applicant.

Mr. H.S.Vengaonkar with Mr. Aayush Kedia, for Respondent – ED.

Mrs. Ranjana D. Humane, APP for State.

IO Sudhanshu Srivastava, Asstt. Director, ED present.

CORAM: N.J.JAMADAR, J.

DATE : 6 MAY 2024

ORDER :

1. The applicant, who is arraigned in Special Case No.1728 of 2023 arising out of ECIR/MBZO-II/29/2023 registered by the Directorate of Enforcement – Respondent No.1 for having committed offences punishable under Section 4 of the

Prevention of Money Laundering Act, 2002 ('PMLA') on the basis of a predicate offence bearing FIR No.RC0742023E0004 for the offences punishable under Sections 120B, 420, 409 of IPC and Sections 13(2) read with 13(1)(c) and 13(2) read with 13(1)(a) of the Prevention of Corruption Act, 1988 at CBI, BS&FB Delhi, has preferred this application for bail on medical ground.

2. The application proceeds on the premise that the applicant and his wife, Anita, suffer from terminal cancer. The applicant is both sick and infirm, and, therefore, covered by the first proviso to Section 45(1) of the PMLA. As the applicant seeks to be enlarged on bail by invoking the first proviso to Section 45(1) of PMLA on medical grounds, it may not be necessary to note the background facts, elaborately.

3. It may suffice to note that the allegations in FIR No.RC0742023E0004 are that the applicant in connivance with the other accused persons deceived Banks by siphoning off the funds with the help of the subsidiaries of M/s. Jet Airways (India) Ltd., by showing bogus expenses and personal expenses, and, thereby caused wrongful loss to the tune of Rs.538.62 Crores to Canara Bank and Rs.190.04 Crores to the erstwhile Syndicate Bank.

4. At the outset, it must be noted that though in the application, the applicant has made averments touching upon the merits of the prosecution for the offence punishable under Section 4 of PMLA, yet, during the course of submissions, the prayer for bail was premised solely on the medical condition of the applicant and

his wife, Anita. On this score, the substance of the application is that the applicant has been admitted in Sir H.N.Reliance Hospital as he is critically ill. The applicant is suffering from duodenal cancer, treatment for which is complicated. Anita, wife of the applicant has also been suffering from severe cancer, and despite multiple surgeries, the cancer has recurred. Critical state of health of the applicant's wife is exacerbating the mental condition of the applicant.

5. A reference is made to the orders passed by the learned Special Judge, PMLA, various medical reports and the advice of the medical professionals regarding the progress of the disease which the applicant is suffering from, line of treatment, challenges therein and the constraints which the applicant faces on account of incarceration. The applicant avers that the detention of the applicant, in the situation in which the applicant finds himself on account of his health and that of his wife, would be in gross violation of the right to life guaranteed under Article 21 of the Constitution of India. Therefore, as the applicant does not, otherwise, pose any flight risk, there is no possibility of tampering with evidence, and the applicant has firm roots in the society, the applicant be released on bail on medical ground.

6. I have heard Mr. Harish Salve, learned Senior Advocate for the Applicant, and Mr. Venegaonkar, learned Special PP for Respondent No.1 at some length. The learned Counsel took the Court through the material on record, especially the medical reports and the order passed by the learned Special Judge,

PMLA.

7. Mr. Salve, learned Senior Advocate for the applicant submitted that, at this stage and in this application, the applicant does not propose to controvert the fact that there are allegations against the applicant. Nonetheless, the situation in life of the applicant and his wife is such that the statutory restrictions in the matter of grant of bail incorporated in Section 45(1) of the PMLA, are required to be humanized by resorting to the proviso to sub-Section (1) of the PMLA. Mr. Salve urged that the situation warrants most humane consideration. The wife of the applicant has been suffering from a dreaded disease. To the mis-fortune of the applicant, he has also been diagnosed with duodenal cancer. Referring to the opinion of the medical professionals, Mr. Salve further submitted that the applicant is not only sick, but infirm. Infirmary, in turn, is not only physical, but also of mind. In this situation, according to Mr. Salve, the applicant deserves to be enlarged on bail, at least for few months, to have treatment for cancer and also attend to his wife Anita, who is also suffering from a terminal disease.

8. Mr. Venegaonkar, learned Special PP, submitted that the Respondent No.1 has not taken an unreasonable stand before the Special Court. Respondent No.1 does not profess to dispute that the applicant requires treatment. The applicant has been admitted in the hospital of his choice, though the Special Court has recorded that the best treatment for cancer is available at Tata Memorial Centre. Respondent No.1

has no objection to continue the treatment of the applicant at the hospital of his choice. What the applicant requires, at this stage, is the proper treatment of his sickness and not bail, emphasised Mr. Venegaonkar.

9. As a second limb of the submission, Mr. Venegaonkar would urge that the medical reports indicate that the applicant requires immediate treatment. The applicant has chosen not to opt for the preferred line of treatment. Conversely, there is no medical opinion that the applicant is fit to be discharged from the hospital. From this perspective, the learned Special Judge was, according to Mr. Venegaonkar, justified in declining to release the applicant on medical bail observing that the need of the applicant was long hospitalization, which the Court has permitted. Since the applicant is receiving the best possible treatment for his health issues, and the alleged infirmities, the applicant does not deserve to be enlarged on bail on the said count.

10. Before advertng to deal with the medical reports, which constitute the substratum of the prayer for release on bail, I deem it appropriate to consider the scope of the proviso to Section 45(1) which empowers the Court to release a person accused of an offence under the PMLA on bail, if such person is sick or infirm or a woman or under 16 years of age. Relevant part of Section 45 of PMLA reads as under :

“45. Offences to be cognizable and non-bailable : - (1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on

his own bond unless -

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail :

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs.”

11. The legal position as regards the grant of bail in matters where a person is accused of an offence punishable under PMLA is fairly crystalized. Sub-section (1) of Section 45 of PMLA contains an interdict against the grant of bail to a person accused of an offence punishable under PMLA, unless the twin test envisaged thereby, namely, opportunity to oppose the prayer for bail and satisfaction of the Court that there are reasonable grounds for believing that the applicant is not guilty of such offence and he is not likely to commit any offence while on bail is recorded. The first proviso, however, empowers the Court to release a person, on bail who is under 16 years of age or is a woman or is sick or infirm.

12. The aforesaid proviso to Section 45 of PMLA appears to have been inserted by the legislature to mollify the rigour of the restrictions envisaged by the main part of sub-section (1) of Section 45 of PMLA. It is pertinent to note that such a

provision is not to be found in other statutes which contain identical restrictions like MCOCA, NDPS and UAPA. The intent of the legislature to vest discretion in the Court to grant bail despite the existence of the bar in the main part of sub-section (1) of Section 45 is required to be given effect to. Undoubtedly, the grant of bail by invoking first proviso is in the discretion of the Court. However, as is the case with exercise of discretion in any matter, such discretion is required to be exercised in a judicious manner. The Court must pose unto itself the question as to whether the person seeking bail falls within any of the exceptional categories and, if so, whether in the totality of the circumstances, the exercise of discretion would be justifiable.

13. Evidently, the Parliament has used the words, 'sick' or 'infirm' disjunctively. A person may be sick and infirm. A person can be 'infirm' without being 'sick'. However, it is not every kind of sickness which would justify the grant of bail lest the object behind prescribing stringent conditions in the matter of grant of bail would be frustrated if a person can be released on bail on the ground of sickness *dehors* the degree of seriousness of the ailment. It is in this context, the reports of the experts assist the Court in forming an opinion as to whether the person claiming bail is suffering from such sickness as to warrant his release on bail.

14. Ordinarily, the consideration that the sickness is such that it cannot be adequately or effectively treated in the prison hospital /the medical facility attached to the prison or Government hospital, weighs with the Court. The degree of sickness also

bears upon the exercise of discretion. If it is a life threatening disease, the Court would be well advised to exercise its discretion. Conversely, it cannot be said that the proviso cannot be resorted to in the case of sickness which is not life threatening. Essentially, the question of sickness, or for that matter infirmity, is rooted in the thickets of facts of the given case.

15. Infirmity, in turn, may arise from a variety of causes. Infirmity may not necessarily be on account of sickness. The Parliament has therefore advisedly used the words 'sick' or 'infirm' disjunctively. The provision is required to be construed in such a manner as to advance the guarantee of right to life under Article 21. A prisoner cannot be left in the lurch even when he is suffering from a serious ailment for the only reason that his personal liberty is deprived by operation of law. A prisoner has right to have treatment to preserve his health. It is the obligation of State to provide requisite treatment to a prisoner so as to preserve and protect his health. A prisoner is entitled to the dignity he deserves.

16. A reference to the judicial decisions in which the courts have dealt with the nature and import of the proviso to Section 45(1) of PMLA may be apposite. In the case of **Kewal Krishnan Kumar V/s. Enforcement Directorate**¹ a learned Single Judge of the Delhi High Court, after adverting to the provisions of Section 45 of the PMLA enunciated, inter alia, that a person, though not 'sick', may be 'infirm' and still

1 2023 SCC Online Del 1547

entitled to seek the benefit of exception in the proviso to Section 45(1) of PMLA. The observations in paragraphs 46 and 47 read as under :

“46] Since ‘sick’ and ‘infirm’ are separated by ‘or’, consequently, a person who, though, not sick but infirm would still be entitled to seek the benefit of the exception in the proviso to section 45(1) PMLA and vice-versa.

47] Mere old age does not make a person ‘infirm’ to fall within section 45(1) proviso. Infirmary is defined as not something that is only relatable to age but must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis.”

17. It would be contextually relevant to note that in the facts of the said case, the learned single Judge, declined to extend the benefit of the proviso to the applicant therein on the premise that, he was not suffering from life threatening ailments and could be treated with the medical facilities available in jail.

18. In the case of Vijay Agrawal Through Parokar vs. Directorate of Enforcement² another learned single Judge of Delhi High Court, observed as under :

“14] Howsoever serious the offence may be, the health condition of a human being is paramount. The custody during the period of investigation cannot be termed to be punitive in nature. The health concern of a person in custody has to be taken care of by the State and keenly watched by the judiciary. Every person has a right to get himself adequately and effectively medically treated.

15] Article 21 of the Constitution of India not only given a fundamental right to live but the right to live with dignity. Right to live a healthy life is also one of the facets of fundamental rights granted by the Constitution of this Country. The consistent view has been taken that if sufficient treatment

² 2022 SCC OnLine Del 4494.

is available in the jail then preferably the same should be provided to the prisoners. This Court firmly believes that a person in custody suffering from serious ailment should be given an opportunity to have the adequate and effective medical treatment. The discretion for granting the interim bail on medical ground may not be exercised only at a stage when the person is breathing last or is on the position that he may not survive.”

19. In the case of **Devki Nandan Garg vs. Directorate of Enforcement**³, another learned single Judge of the Delhi High Court was persuaded to grant bail to the applicant therein observing, inter alia, that once a person falls within the proviso of section 45(1), he need not satisfy the twin conditions under section 45(1). In the said case, the applicant therein was suffering from various ailments. One kidney was dead and the other kidney was functioning at 30% capacity. He required constant monitoring, otherwise his fluctuations could have caused death.

20. A useful reference can also be made to the decision of the Supreme Court in the case of **Saumya Chaurasia V/s. Directorate of Enforcement**⁴ wherein the Supreme Court postulated that the grant of bail by invoking the proviso to Section 45(1) of the Act, is discretionary. It could not be construed as a mandatory or obligatory provision once a person is said to fall within either of the categories. It was in terms observed that, in essence, Courts should exercise discretion judiciously using their prudence, while granting the benefit of the first proviso to Section 45(1) PMLA

3 2022 SCC OnLine Del 3086.

4 2023 SCC Online SC 1674

to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency would be material considerations.

21. In the case of **State of U.P. vs. Gayatri Prasad Prajapati**⁵, in the facts of the said case, the Supreme Court held that when the respondent therein was being given treatment in the super- speciality hospital, i.e., S.G.P.G.I.M.S. as recommended by K.G.M.U., the Court failed to see as to what were the shortcomings in the medical treatment offered to respondent, which could have been the basis for grant of interim bail on medical ground. The Supreme Court observed that, no satisfaction was recorded by the High Court that treatment offered to respondent was not adequate and he required any further treatment by any particular medical institute for which it was necessary to release the respondent on interim bail on medical grounds.

22. In the case of **Pawan @ Tamatar vs. Ram Prakash Pandey and Another**⁶ the Supreme Court had adverted to two circumstances which bear upon the exercise of discretion in the matter of grant of bail on medical ground. One, there was no contention that the applicant therein still required medical treatment. Two, it was not stated that the applicant therein had not received proper medical treatment from the jail authorities.

23. In the case at hand, there are two facets to the prayer of the applicant for

⁵ 2020 SCC OnLine SC 843.

⁶ (2002) 9 Supreme Court Cases 166.

release on bail. First, the sickness of the applicant himself. Second, the terminal illness which the applicant's wife is allegedly suffering from. Infirmity of mind and not only body is allegedly brought about by the combination of both.

24. To start with, it may be appropriate to note the medical condition of Anita, wife of the applicant. The certificate issued by Shree H.N.Reliance Hospital indicates that Anita has been diagnosed with endometrial adenocarcinoma of clear cell type. She has undergone a follow-up PET/CT scan on 1 April 2023 and recurrent disease progression has been noted in the scan which is life threatening for her clinical condition. Dr. Sewanti Limaye who treats Anita has opined that Anita will need support of her husband as a primary caretaker.

25. As regards the health condition of the applicant, though a number of reports are annexed to the application, a reference can be made to three reports which give a fair indication of medical condition of the applicant. In the report dated 18 March 2024, Dr. Lakdawala opined as under :

“His (the applicant – Naresh Goyal's) CRP was high 7.79.

The Dota Pet Scan revealed an abnormal high grade somatostatin Receptor expression (Krenning's score 4) seen in multiple arterially enhancing nodules in the walls of D1, D2 and D3 segments of Duodenum compatible with multi focal duodenal Neuroendocrine tumours. Presnece of neuroendocrine tumour in the D1, D2 and D3 segments of duodenum which was far more than what was previously seen on the fastroscopy.

During this admission the applicant had fever with chills for which CBC and urine culture were done. Dr. Santoshi Nagaonkar the Urologist, who

inspected him recommended a cystoscopy + Laser Vaporization of prostate. He underwent the procedure on 12/03/2024. He is currently catheterized. His WBC count was 19.49 as of 14/03/24.

He was seen by Dr. Vasant Nagvekar Infectious disease specialist, who stopped inj. Magnex Forte and instead started him on Inj Zavicefta.

Dr. Akash Shukla further referred him to Dr. Amit Maydeo, Head of Gastroenterology. Dr. Amit Maydeo and his team had seen him and said that endoscopic resection of the neuroendocrine tumour in the duodenum will not be possible. Dr. Sewanti Limaye is to review the case and further seek two opinions internationally to determine further medical management of his neuroendocrine tumor.

A CT abdomen with contrast was done which revealed few nodular arterial enhancing mucosal – submucosal lesions in gastric fundus, D1, D2 and D3 segments of duodenum in a K/c/o multifocal neuroendocrine neoplasms.

In view of his CT scan report, a reference was raised to Dr. Amit Maydeo to consider repeat gastroscopy and EMR Excision of the stomach lesion if possible.

The option of further management to be decided after his repeat Gastroscopy.

Mr. Goyal has been briefed on the options of chemotherapy, which will not treat him of his malignancy but may help controlling or delaying its spread.

It carries with it the risk of drop in WBC counts, diarrhoea which make him susceptible to repeated infections and subsequent hospital admissions.

Alternatively, a Whipple's surgery because tumors have already spread to the third part of the duodenum. This is the supramajor surgery which has its own risk and he might need a prolonged stay in the hospital."

26. In the further report dated 8 April 2024, Dr. Lakdawala opined as under :

"This is to state that Mr. Naresh Goyal during his stay at the hospital has had multiple interactions with a neurologist Dr. Arun Shah, Orthopaedic surgeon

Dr. Vaibhav Bagaria for his myalgia and unstable gait.

He has had MRI Scans for his brain and spine.

He has also had a full evaluation done for his mental status with Dr. Narendra Kinger (Clinical psychologist and psychotherapist). Dr. Kinger's report is attached herewith which shows that he has severe depression. He is under the care of Dr. Avinash D'Souza, psychiatrist for the same.

As for his Neuroendocrine tumour. We have discussed all options of management with Mr. Goyal and his family.

Non-surgical medical line of treatment includes the use of Inj. Sandostatin which does not give him cure from the disease or long term benefits.

Given the fact that his tumour has spread to the 1st, 2nd and 3rd part of the duodenum we have commended a Whipple's procedure.

A Whipple's procedure is technically a very challenging surgical procedure with immense risks given Mr. Goyal's age. We have explained all the risks including a leak which can result in infection, sepsis and subsequent threat to life. He has also been informed about the possibility of a stricture at the anastomotic site as well as the possibility of a pancreatic fistula.

Given the criticality of the surgery he has requested another surgical opinion and some time to think about the options that he has at his disposal. If Mr. Goyal does decide to undergo the Whipple's procedure he has to take extreme precautions post the surgery. Mr. Goyal is required to stay in a sanitized, hygienic environment, along with healthy nutrition and stress free atmosphere given his mental status for his post surgery rehabilitation for life.

These things are critical for enhancing the chances of a disease free life. If not followed it could lead to complications which could be life threatening."

27. The latest report dated 23 April 2024 records as under :

"Continuation to the medical updates on Mr. Naresh Goyal :

Given the critical state of Mrs. Anita Goyal due to her disseminated ovarian

cancer the family has taken a call for Mr. Naresh Goyal not to undergo the high risk Whipple's surgery for the moment.

They have instead opted for medical chemotherapy. The first injection of chemotherapy shall be given shortly after which he will be closely monitored in the hospital to look for any after effects of the chemotherapy.

Given the fact that Mr. Goyal also has Barrett's oesophagitis in the oesophagus because of severe acid reflux due to a large hiatus hernia, it has been decided that the side effects of the chemotherapy settle over the next couple of weeks, he will be undergoing a laparoscopic fundoplication to treat his hiatus hernia and prevent acid reflux as soon as he is deemed fit."

28. A cumulative reading of the aforesaid reports would indicate that the applicant has been suffering from duodenal neuroendocrine tumour. As the tumors have spread to the 1st, 2nd and 3rd part of duodena, the doctors have recommended 'Whipple's' procedure. Preferred line of treatment is Whipple's surgery as tumors have already spread to the 3rd part of the duodenum. It is a supramajor surgery which has its own risk. The applicant has taken a call not to undergo high risk Whipple's surgery. The applicant has opted for medical chemotherapy. In the opinion of the doctors, the option of chemotherapy will not treat the applicant of his malignancy, but may help controlling and delaying its spread.

29. In the light of the aforesaid medical record and opinions, it would be audacious to hold that the applicant is not sick. The applicant is suffering from cancer. Given the situation in life of the applicant, including his age and other ailments that he is suffering from, as well as the critical condition of the applicant's wife Anita, the

applicant has not opted for the preferred treatment, which is also fraught with risk.

The applicant claims to be 72 years of age. Advanced age brings in its trail associated ailments and infirmities. The physical ailments, in the instant case, seem to have been compounded by the critical condition of the applicant's wife.

30. In these circumstances, in my considered view, the matter cannot be looked at from the perspective as to whether the applicant is getting adequate treatment at the hospital. Undoubtedly, the applicant is getting the treatment at the hospital of his choice. The medical opinions/reports do not indicate that the applicant requires further specialised treatment at even more specialised centre/hospital. However, to evaluate the prayer for bail on the said consideration alone, would be taking a very constricted view of the matter. There is a qualitative difference between the treatment which a person gets as an under trial prisoner and as a citizen under no restraint.

31. The broad submission that since the applicant has got best of the treatment, he does not deserve to be released on bail, loses sight of the precious value of personal liberty. To accept such a broad proposition that once a person gets the requisite treatment, he does not deserve bail, howsoever critical his health condition may be, would defeat the legislative intent of enacting the proviso and render the proviso otiose.

32. The upshot of aforesaid consideration is that the peculiar facts of the

case: the age of the applicant, the disease he is suffering from, the treatment recommended for the said disease, other ailments the applicant is suffering from and the situation in life brought about by the life threatening disease the wife of the applicant is suffering from, cumulatively justify exercise of discretion vested in the Court under the proviso to section 45(1) of PMLA. The applicant can be released on bail for a limited period to avail the treatment for the cancer he is suffering from and attend to his wife, who is also suffering from cancer of an advanced grade.

33. Prima facie, the applicant has roots in society. The possibility of fleeing away from justice and tampering with evidence seems remote. In any event, the apprehension on the part of the prosecution regarding tampering with evidence and fleeing away from justice, can be taken care of by imposing stringent conditions.

34. Hence, the following order :

ORDER

(i) The Application stands partly allowed.

(ii) The Applicant – Naresh Goyal be released on bail, for a period of two months, on furnishing a P.R. bond in the sum of Rs.1 Lakh and one or two sureties in the like amount to the satisfaction of the learned Judge, PMLA, Court Mumbai.

(iii) The Applicant shall remain within the jurisdiction of the PMLA Court i.e. Greater Mumbai, and shall not leave the area without prior permission of the PMLA Court.

(iv) The Applicant shall surrender his passport before the PMLA Court, if not already surrendered.

(v) The applicant shall furnish his contact details, and mobile number to the IO, and shall always be reachable to the IO.

(vi) The Applicant shall not, either himself, or through any other person, tamper with the prosecution evidence and give threats or inducement to any of the prosecution witnesses.

(vii) The Applicant shall not indulge in any activity similar to the activities on the basis of which the Applicant stands prosecuted.

(viii) The Applicant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities, through any mode of communication.

(ix) In the event the Applicant violates any of the aforesaid conditions, the relief of bail granted by this Court shall be liable to be cancelled.

(x) After release of the Applicant on bail, he shall file an undertaking within one week before the PMLA Court stating therein that he will strictly abide by the aforesaid conditions.

(xi) By way of abundant caution, it is clarified that the observations made in the order are limited to the consideration of the question of grant of bail on medical grounds and they shall not be construed as an expression of opinion which

bears on the merits of the matter in this case as well as the prosecution for the predicate offences.

Application disposed.

(N.J.JAMADAR, J.)

35. At this stage, Mr. Ponda, learned Senior Advocate for the Applicant, submits that the applicant may require a couple of days time to furnish sureties, and, in the meanwhile, the applicant may be permitted to be retained as an indoor patient in Sir H.N.Reliance Hospital. As the Court has observed that the applicant requires hospitalization, the applicant be retained as an indoor patient at Sir H.N.Reliance Hospital, till 10 May 2024 or the sureties are furnished, whichever is earlier.

(N.J.JAMADAR, J.)