

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3377 OF 2023

Sarang Wadhawan  
Age : 47 Years, Occupation : Business,  
Presently lodged at : Mumbai Central Jail,  
Arthur Road, Mumbai. ...Applicant  
(Accused No.2)

*Versus*

Directorate of Enforcement  
Through : The Assistant Director,  
Zone Office – I, Kaiser – I – Hind  
Building, Ballard Estate, Fort,  
Mumbai – 01. ...Respondent

ALONG WITH  
CRIMINAL BAIL APPLICATION NO. 3867 OF 2023

Rakesh Kumar Wadhawan  
Age : 71 Years, Occupation : Business,  
Presently confined at:- Wadhawan  
House, Plot No.32/A, Union Park  
Road No.5, Nr. JN Petit School,  
Bandra (W), Mumbai : 400 051. ...Applicant  
(Accused No.1)

*Versus*

1. Directorate of Enforcement  
Through : The Assistant Director,  
Zone Office – I, Kaiser – I – Hind  
Building, Ballard Estate, Fort,  
Mumbai – 400 001. ...Respondent No.1
2. The State of Maharashtra ...Respondent No.2

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|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Mr.Aabad Ponda–Senior Advocate a/w Mr.Chandansingh Shekhawat, Mr.Subhash Jadhav, Mr.Yashovardhan Deshmukh i/b. Parinam Law Associates:- | Advocates for Applicant in Criminal Bail Application No. 3377 of 2023. |
| Mr.Hitesh S. Venegavkar a/w Mr.Ayush Kedia:-                                                                                            | Advocates for Respondent– Directorate of Enforcement.                  |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| Mr.Harshad Nimbalkar a/w Mr.Hrishikesh Chitaley, Mr.Ashish Verma, Mr.Sagar Shetty, Mr.Satyam Nimbalkar, Mr.Abhishek Arote, Ms.Sonia Redkar, Ms.Shraddha Nagaonkar, Mr.Akshay Naik, Mr.R.Chhabra i/b.Mr.Sagar Shetty:- | Advocates for Applicant in Criminal Bail Application No.3867 of 2023. |
| Mr.Hitesh S. Venegavkar a/w Mr.Ayush Kedia:-                                                                                                                                                                          | Advocates for Respondent No.1– Directorate of Enforcement.            |
| Mr.S.V.Gavand:-                                                                                                                                                                                                       | APP for Respondent No.2–State.                                        |

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CORAM : S. M. MODAK, J.

RESERVED ON : 5<sup>th</sup>/21<sup>st</sup> MARCH 2024PRONOUNCED ON : 5<sup>th</sup> APRIL 2024P. C. :--: Table of Contents :-

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1. There is an Enforcement Case Information Report (hereinafter, the “ECI Report”) lodged by Enforcement Directorate (hereinafter, “the E.D.”) on 3<sup>rd</sup> October, 2019 against 38 persons for investigation

under the provisions of the Prevention of Money-Laundering Act, 2002 (hereinafter, “the PML Act”). These two Applicants are amongst them. It was lodged on the background of ‘scheduled offence’ registered at Bhandup Police Station on 30<sup>th</sup> September 2019 and subsequently, transferred to Economic Offences Wing (hereinafter, “EOW”) involving these two Applicants along with others for the offences punishable under Sections 420, 467, 471, 120-B of Indian Penal Code, 1860 (hereinafter, “the IPC”). Both these Applicants came to be arrested on 17<sup>th</sup> October 2019. After carrying out the investigation, the Assistant Director filed complaint before the Special Court – PMLA – Greater Mumbai on **16<sup>th</sup> December, 2019** for the offence punishable under **Section 3 read with Section 4 of the PML Act.**

### Allegations

2. The sum and substance of the allegation against these two Applicants is, these two Applicants in their individual capacity and as promoters of the Housing Development and Infrastructure Limited (hereinafter, the “HDIL”) and beneficial owner of the HDIL Group of Companies predominantly availed loan in Crores from the Punjab and

Maharashtra Co-operative Bank Limited (hereinafter, the “PMC Bank”) and the amount has gone upto to the tune of **Rs.6117.93 Crores**. This was during 2008 to 2019. The principal amount is **Rs.2540.92 Crores** and interest is **Rs.3577.01 Crores**. The Agency claims that they are **proceeds of the crime** derived after committing the ‘*scheduled offence*’. They applied for regular bail before the Court under PML Act, Greater Mumbai and it was rejected on 4<sup>th</sup> October 2023. That is how, they approached this Court with a request for bail.

### Submissions

3. I have heard learned Senior Advocate Shri.Ponda for Applicant – Sarang Wadhawan in Bail Application No.3377 of 2023 and learned Advocate Shri.Nimbalkar and Shri.Chitale for Applicant – Rakesh Kumar Wadhawan in Bail Application No. 3867 of 2023. Also heard learned Advocate Shri.Venegavkar for Respondent No.1 – E.D., and learned APP Shri.Gavand for Respondent No.2 – State.

4. The grounds taken in the Bail Applications are as follows:-

(a) They have already undergone half of the punishment for offence under Section 4 of PML Act and as such, they are entitled to be released on bail under **Section 436-A** of the Code of Criminal Procedure, 1973 (“Cr.P.C./Code”).

(b) Filing Bail Application / other Applications do not amount to delaying the conduct of trial and as such, the disqualification mentioned in that Section cannot be used against the Applicants,

And

(c) There is no death penalty prescribed for this offence.

5. Whereas, learned Advocate Shri.Venegavkar for E.D., opposed the bail on following grounds:-

- (a) There is no absolute right recognized as per Section 436-A of Cr.P.C.
- (b) The seriousness of the allegations and severity of punishment need to be considered prior to exercising discretion as per Section 436-A of the Code.
- (c) There is difference in between '*right to default bail*' under Section 167 of the Code on one hand and under Section 436-A of the Code on the other hand.
- (d) The order refusing bail passed by the trial Court records all the circumstances which have resulted into delaying the conduct of the trial.

#### Punishment prescribed

6. These Applicants are accused of committing the offence under Section 3 of PML Act. The punishment prescribed under Section 4 is as follows:-

- (i) There will be minimum sentence for 3 (three) years,
- (ii) Maximum sentence will be 7 (seven) years
- And
- (iii) Fine which may extend to five lakh rupees.

Indisputably, there is no punishment of death prescribed under Section 436-A of the Code. **So, the first requirement is satisfied.**

#### Period undergone

7. The second requirement is there should be detention for a period of one-half of the maximum period of punishment. For Section 4, maximum punishment is seven (7) years. So, the Applicants asking for bail under this provision must be in a jail for a period upto three and half years. In this case, both the Applicants came to be arrested on 17<sup>th</sup> October 2019. Certainly, they are in detention for a period more than three and half years. **This condition is also satisfied.**

#### Delay in conduct of trial

8. Now, the Court has to see whether the Applicants are responsible for delaying the proceedings as contemplated in Explanation to Section 436-A of the Code. There are rival contentions. The Applicants contend that if they have filed Interim Applications before the Special

Court, it does not mean that they are delaying the proceeding. Because, they contend that they were filed in exercise of a '*Constitutional Right*' to protect one's own '*Personal Liberty*'. As against this, Mr.Venegavkar strongly emphasized on the dilatory tactics played by the Applicants by filing numerous Applications. He contends that they have already filed a '***draft charge***' on **23<sup>rd</sup> November 2023** and due to filing of various Applications, the Court could not take up the case for '*framing of charge*'. Hence, certainly the Applicants are debarred from claiming the benefit of Section 436-A of Cr.P.C. He also emphasized that the learned Special Judge has dealt with this aspect by giving cogent reasons in the order refusing to grant benefit of Section 436-A of the Code. For deciding this issue, the factual aspects need to be looked into.

### **Status of the case before the Special Court**

9. Both the sides have filed few of the orders passed by the Special Court on certain issues raised before me. They have filed copies of those orders. They are as follows:-

- (a) **Copy of order dated 4<sup>th</sup> October 2023 rejecting the prayer for bail under Section 436-A of the Cr.P.C.,**

And

- (b) **Copies of the orders passed on roznama** on certain issues raised before him.

10. On going through the status of the case and conduct of the parties, we can certainly read the reasoning given in that order as well as the roznamas also.

**Order dated 4<sup>th</sup> October, 2023:-**

(A) The Learned Special Judge has dealt with the issues and given findings as follows :-

- (a) The date of arrest for both the Applicants is 17<sup>th</sup> October 2019. Accused No.1 – Rakesh Kumar Wadhawan filed Application on 30<sup>th</sup> March 2023. It means, the Applicant was behind bar for 3 years, 5 months and 13 days on the date of Application. On the basis of said Application, the Applicant was held not entitled to the benefit. (Para 10).
- (b) Accused No.2 – Sarang Wadhawan filed Application on 4<sup>th</sup> May 2023. At that time, the period undergone was 3 years, 6 months and 17 days. (Para No.11). Admittedly, when these Applications are filed before this Court, both the Applicants are behind bar for more than half of the punishment.

- (c) **In Para No.12:-**

The trial Court has noted filing of the main complaint and

filing of two subsequent complaints and still, the investigation is going on.

The trial Court observed:-

As per explanation (ii) to Section 44 of PML Act, yet total proceeds of crime are to be ascertained finally.

(Subsequent complaint by way of legal fiction is included in the first complaint as per the said explanation).

The trial Court also noted that:-

Investigation into an offence with EOW is still going on.

In Para No.13, the trial Court noted:-

The amount of misappropriation involved in EOW comes to Rs.4,435 Crore of the Punjab and Maharashtra Co-operative Bank Ltd. Whereas, proceeds of the crime are Rs.6,117.93 Crore as per E.D.

In Para No.15, the trial Court noted:-

The right under Section 436-A is not '*absolute right*' but as per Explanation, the Accused has to make out a case.

In Para No.16:-

The Special Judge considered the dates of filing of the 3 complaints. They are as follows:-

- (i) First complaint was filed on 16<sup>th</sup> December 2019,
- (ii) Subsequent complaint on 16<sup>th</sup> March 2022

And

- (iii) Next complaint on 26<sup>th</sup> May 2023.

In Para No.17, the trial Court considered:-

The provisions of Section 44(1)(c) of PML Act and its interpretation given in case of *Rana Ayub v/s. Directorate of Enforcement*<sup>1</sup>. The Special Court also noted the commitment of EOW case as per the order dated 2<sup>nd</sup> August 2023. The Special Court was conscious of simultaneous trial of the cases.

The trial Court noted the conduct of Applicant – Rakesh Kumar in filing Bail Applications on medical and other grounds. This is after rejection of the first Bail Application on 14<sup>th</sup> July 2020. (Exhibit-16 and Exhibit-17).

The trial Court noted:-

Rejection of bail application of both the Applicants on merits even by Hon'ble Supreme Court. (Para No.18).

The trial Court noted:-

The conduct of Accused No.1 – Rakesh Kumar in filing third Bail Application on merits on 24<sup>th</sup> March 2022 and kept it pending for a long period and it was not pressed. (Exhibit-147).

Furthermore, the trial Court observed in Para No.18:-

From 14<sup>th</sup> July 2020 (Exhibit-147B) till 30<sup>th</sup> March 2023 and 04.05.2023 (Exhibit-193), both the Accused have filed Bail Applications before this Court and before the Hon'ble Supreme Court thereby challenging the orders passed by the Special Court. The total time consumed by both the Applicants comes to 3 years, 5 months and 13 days and 3 years, 6 months and 17 days for the Accused respectively.

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1 2023 4 SCC 357

That is why, the trial Court observed:-

It could not frame charge against them. (Para No.18).

It shows the sensitivity of the Special Judge to the nature of allegations against the Applicants and the enormous amount of misappropriation.

The trial Court has reproduced:-

The principles laid down by Hon'ble Supreme Court in case of ***Vijay Madanlal Choudhary v/s. Union of India***<sup>2</sup> (Paragraph Nos.144 to 149). (In Para No.15 of the order and reiterated them in Para No.20).

That is why, learned Special Judge observed:-

Proceeds of crime of Rs.6,117.93 Crores are generated by the criminal activity relating to '*scheduled offence*.' The trial Court noted, both these Applicants have failed before this Court on merits.

(B) The materials collected dissuaded the trial Court to grant the benefit under Section 436-A of the Code of Criminal Procedure.

11. As learned Advocate Shri.Venegavkar emphasized on going through the reasons given by the trial Court, I have narrated them in detail. I will give my findings about the conduct of the Applicants in filing separate Applications and its effect on '*right to bail under Section 436-A of the Code*' later on.

<sup>2</sup> 2022 SCC OnLine SC 929

**Nature of other orders brought to my notice**

12. Learned Senior Advocate Shri.Ponda and learned Advocate Shri.Nimbalkar as well as Mr.Venegavkar have placed before me few of the orders passed by the learned Special Judge. They want to show how the Applicants have indulged into dilatory tactics and as to how the Prosecution was vigilant to go on with the trial of the case. The orders placed before me are as follows:-

(a) **Order dated 20<sup>th</sup> July 2023:-**

Passed by the Court of Additional Chief Metropolitan Magistrate thereby committing the case to Special Court on the Application of Assistant Director. For knowing the reasons for filing this Application, even I have granted liberty to Mr.Venegavkar to file copy of that Application. He has filed it. I have perused it. Predominantly, it is filed in exercise of powers under Section 44(1)(c) of the PMLA Act.

(b) **It is a matter of record of EOW case that:-**

Scrutiny of the papers by Registry of City Civil Court is pending and as submitted on 7<sup>th</sup> February 2024 by the Investigating Officer, the scrutiny will take eight (8) weeks. Till the time these matters are closed for orders, no one on behalf of the EOW has pointed out to me that

scrutiny is over. It is uncertain when the scrutiny will be over and the case of '*scheduled offences*' will proceed to further stage.

13. Though Mr.Venegavkar has filed a bunch of the orders, except the order dated 23<sup>rd</sup> November, 2023 regarding filing of a '*draft charge*' by Enforcement Department at Exhibit-230, none of the orders were specifically pointed out to me by him. However, cursorily I have gone through those orders on roznamas. **Broadly speaking, they pertain to:-**

- (a) The scrutiny of papers prior to '*issuing a process*' for PMLA offences and time consumed. (Orders dated 3<sup>rd</sup> January 2020 and 4<sup>th</sup> January 2020). The Special Court has recorded the documents comprises 4 big files.
- (b) On 8<sup>th</sup> January, 2020, the Court has '*issued a process*' against the Accused Nos.1 to 25 for Section 3 read with Section 4 of PML Act. Thereafter, the presence of the Accused was secured and some formalities for signing on Vakalatnama.
- (c) On some dates, the prayers are made for getting certain formalities in the Jail. It is but natural for the Applicants to pray for certain facilities in the Jail. Ultimately, there is a discretion of the Special Judge whether to allow them or not and '*undertrial prisoner*' cannot expect the same treatment which he enjoys outside the Jail when he is in

Jail.

- (d) Some Intervention Applications are filed including by Punjab and Maharashtra Bank Depositors. (Referred in the order dated 6<sup>th</sup> March, 2020).
- (e) There is a reference of filing of Bail Applications and the completion of formalities for reply and hearing. There is a reference of directions for producing the Accused through V.C., in view of the Covid situation. (dated 16<sup>th</sup> March, 2020).
- (f) The grievances were made on account of health. Hence, directions were given to the Jail Authorities and to J.J. Hospital. Even, on some occasion, the doctors from G.T. Hospital are present. A request was made also by Applicant – Rakesh Kumar for shifting him to a private hospital (28<sup>th</sup> July, 2020).
- (g) Even, a direction was given to Jail Authorities for recording the statements of these Applicants by the Officer of Serious Fraud Investigation Officer – Ministry of Corporate Affairs. (25<sup>th</sup> January, 2021).
- (h) On 23<sup>rd</sup> July, 2021, the Applications by Applicant Rakesh Kumar and Sarang were dismissed. Whereas, Application by Sarang was withdrawn. The permission was sought to record the statements of all these Applicants and Co-accused – Waryam Singh under Section 50(2) and (3) of PML Act. (4<sup>th</sup> February 2022).

- (i) The permission was partly allowed on 8<sup>th</sup> February 2022 to record the statement of Applicant–Sarang and Co-accused Waryam Singh. The Application for transfer of the Accused in another C.R. (11<sup>th</sup> July 2022).
- (j) Co-accused Joy Thomas was granted bail on 7<sup>th</sup> September, 2022. Co-accused Waryam Singh was released under Section 88 of Cr.P.C., on executing personal bond and sureties (13<sup>th</sup> October 2022).
- (k) An Application under Section 88 of Cr.P.C. by Co-accused (Accused No.26) Romy Mehra – Director of Libra Hotels Pvt. Ltd., (Accused No.28), they were released on bail (16<sup>th</sup> March 2023).
- (l) The Application filed by Accused No.31 for bail and he was taken into formal custody and granted bail under Section 88 of Cr.P.C. (10<sup>th</sup> July 2023).
- (m) The Application at Exhibit-147B and 193 (additional ground under Section 436-A by these Applicants was rejected and judicial custody was extended under Section 309(2) of the Cr.P.C. (25<sup>th</sup> September 2023).
- (n) The Applicant Rakesh Kumar was released on an Interim Bail for three (3) months as per the order of Hon'ble Supreme Court (10<sup>th</sup> November, 2023). The Court recorded, none of the 38 Accused have filed discharge Applications and the '*draft charge*' filed by the Enforcement Department was taken on record at Exhibit-

230. (23<sup>rd</sup> November 2023).

- (o) All the Accused were directed to remain present for framing of charge and matter was adjourned to 7<sup>th</sup> December, 2023. (Order dated 23<sup>rd</sup> November, 2023).

14. **Now, the issue is ; whether these Applicants have delayed the proceedings ?** Learned Special Judge, as mentioned above, has held the Applicants responsible. The stage of the case is for framing of charge and for deciding the Interim Applications, if any. No doubt, it is true that even though the '*draft charge*' was tendered on 23<sup>rd</sup> November, 2023, till today, it is not pointed out that the charge is framed by the trial Court. From the roznamas, I have quoted few of the events that have taken place before the trial Court.

### **Summary**

15. It is important to note how the **time has consumed after filing of complaint** and subsequent complaints. They are as follows:-

- (a) Some time was consumed for scrutiny of papers prior to issuance of process.
- (b) After initial complaint, two more additional complaints were filed involving other Accused persons.
- (c) Certain time is bound to be consumed for securing the presence of the Accused before the Court, completing the

formalities of obtaining signatures on necessary papers.

- (d) Certain time was bound to be utilized for hearing the grievances of the Accused about the facilities at Jail.
- (e) Certain time was bound to be consumed for issuing directions about health condition of the Applicants, more specifically Rakesh Kumar Wadhawan.
- (f) Certain time was bound to be consumed for filing of bail application, reply, hearing and order. Apart from these two Applicants, there are also other Accused persons. Some of them are arrested and some of them are not arrested. However, they were granted bail after they were taken into custody.
- (g) Certain time was consumed for transferring the Accused for investigation of other offences and for recording the statement by SFIO, Investigation Officer.

### Findings

16. The Learned Special Judge has held the Applicants are responsible for delaying the hearing for almost three (3) years. No doubt, all the happenings in the case are before the learned Special Judge only. **But, he has not elaborated how the three (3) years has elapsed.** It is also difficult to inquire the actual reasons, adjournment and by whom, adjournments are sought. Even, it is also difficult for the

trial Court to make observation even though the happenings are before him. That is why, before blaming the Applicants for laches, learned Special Judge has not elaborated the reasons while giving that finding in the order refusing bail.

17. When a person is arrested and liberty is curtailed as per the procedure established by the law, he has got every right to take appropriate steps for getting the facilities inside the jail premises. (That is discretionary). He has got every right to take care of his health. He has got every right to pray for bail. At the same time, the Investigation Agency has got every right to interrogate the Applicants in other offences and it is also the bounden duty of the Court to grant a liberty for investigation in other offences. All these steps and actions cannot be labelled as steps or actions taken for delaying the trial. The ultimate outcome may be delay of trial but unless some malafide is shown by the Enforcement Department, one can't label them as steps undertaken for delaying the conduct of the trial. These steps are taken by both the sides in legitimate exercise of their rights recognized to them by existing law.

18. Now, I will come to the contention of Mr.Venegavkar that benefit

under Section 436-A of the Code cannot be granted when allegations are serious in nature.

### **Nature of Allegations**

19. It is true that ECI Report is filed on the basis of '*scheduled offences*' for forgery and misappropriation investigated by EOW. It is also true that present two Applicants being the directors of HDIL and Bank officials and other persons are the Accused in all the complaints lodged by the Enforcement Directorate. It is true that during investigation, statement of various Bank employees are recorded. My attention is invited to one of such statements of **Mrs.Manjit Kaur Ishwar Singh** – Joint General Manager (Credit and Accounts) of PMC Bank. She has explained how she has recommended the loans to HDIL on the instructions of the Managing Director, Accused – Joy Thomas. She has also explained the frequent visits of both these Applicants to the Bank. Even, she has raised several objections but the Managing Director – Joy Thomas has never listened to her instructions. Even, she has explained even though the loan account of HDIL has become Non-Performing Asset, inspite of that, the Bank has not taken steps in that behalf. She has explained how the Rules were flouted for giving

the benefits to HDIL. There were 44 loan Accounts of HDIL Company.

20. Even Mr.Venegavkar invited my attention to the extract of a statement recorded of the **Applicant Rakesh Kumar** under Section 50(2) of the PML Act. He was an Executive Chairman of HDIL and subsidiaries. The subsidiaries of HDIL Company were involved in real estate and construction and slum rehabilitation. He could not repay the loan and fresh loans were obtained from the Bank. Even the overdraft facility was increased.

21. Whereas, the summary of statement of **Applicant Sarang Wadhawan** is also reproduced in the complaint. The loans were given in his personal name and in the name of the Company. His statement is on the similar lines about the non payment of the loan and again fresh loan. Whereas, HDIL was holding the lands and there is a statement of Darshan Majmudar – Chief Financial Officer - HDIL.

22. The first complaint also refers to summary of facts stated by various witnesses. The Chief Financial Officer of HDIL – **Darshan Majmudar** has also explained how the loans are obtained by parent Company – HDIL and its subsidiaries and they have been utilized to

purchase of the lands. Such companies are 23 in numbers. Even, the business of few of the companies was sold. The statement of close relatives of Applicants are also recorded. The statements of Directors of subsidiaries Companies were also recorded. **Mrs.Rebecca Solomon** is DGM (Audit) of PMC Bank. She was mainly involved in the audit and correspondence with Reserve Bank of India (hereinafter “RBI”) and making compliances. It discloses that few of the Accounts wherein loan was outstanding was hidden and not disclosed to RBI and it was on the instructions of the Managing Director – Joy Thomas. Similar are the statements of Chief Manager – Credit Monitoring Department of the Bank **Shri.Sunil Dalvi**. Then, statement of Chartered Accountant **Mr.Ketan Lakdawala**. Statement of DGM (Credit) of the Bank **Mrs.Karmen Rebello**. Even the statement of Co-accused **Waryam Singh** – Chairman of the PMC Bank was also recorded.

23. They have further revealed that real estate was a core business of HDIL and thereafter, the business expanded in hoteling, media ventures etc. The Bank is a Multi-State Co-operative Bank having 137 branches in States of Maharashtra, Goa, Karnataka, Gujarat, Madhya Pradesh and Delhi. The borrowers are the members / shareholders of

the Bank and they are having influence on lending policy of the Bank. There were many non reported accounts. They have further revealed that the PMC Bank and officials have extended or enhanced the loans against the credit policy of the Bank and against the norms set-up by the RBI. The Applicant – Rakesh Kumar and his son Sarang were the promoters of HDIL and other group companies. There was a proximity in between them and the Managing Director Joy Thomas of PMC Bank. They have also specified the roles played by these Applicants and by the Chairman Waryam Singh of the Bank and Joy Thomas – Managing Director of the Bank. That is why, the Enforcement Directorate has concluded that all these Applicants along with others have committed various offences under IPC and they have generated proceeds of the crime and that is why, offences under Section 3 read with Section 4 of PML Act. According to Mr.Venegavkar, these allegations are serious involving Crores of rupees which is National Exchequer and Legislatures have inserted Section 436-A of the Cr.P.C., not for giving benefit to such Accused persons.

24. Whereas, according to Mr.Ponda and Mr.Nimbalkar, the Hon'ble Supreme Court has granted benefit under Section 436-A of the Code

to the Accused involved in '*Economic Offences*'. They emphasized that once the Applicants have fulfilled the requirements of Section 436-A of the Code, they cannot be denied bail just because the allegations are serious.

**Effect of trial of '*scheduled offences*'**

25. They drew my attention to one more circumstance. According to them, a case involving '*scheduled offence*' is also committed to the Special Court and the Special Court will conduct the trial of case involving '*scheduled offence*' and then will proceed with the trial for the present offence.

26. Whereas, Mr.Venegavkar also referred to the judgment in case of ***Vijay Madanlal Choudhary*** (supra) and he submitted that the Special Court is established as per the provisions of PML Act and hence, priority has to be given to this case earlier to the case involving the '*scheduled offence*'. He referred to the following provisions of the Act:-

(a) **Section 44(1)(c):-**

It talks about the power of Special Court to deal with case involving '*scheduled offence*' from the stage at which it was committed.

(b) The provisions of Cr.P.C., will be applicable toward trial

for 'scheduled offence' (clause-d)

And

- (c) As per the explanation jurisdiction of Special Court, does not depend upon any order passed in respect of 'scheduled offence' and trial of both the offences by the same Court shall not be construed as joint trial.

**The judgments dealing with the provisions of Section 436-A of the Code of Criminal Procedure, 1973**

**27. *Tarun Kumar v/s. Assistant Director Directorate of Enforcement*<sup>3</sup>**

Bail was refused in an offence involving PMLA Act by the High Court of Delhi and it was also confirmed by Hon'ble Supreme Court. The observations in Para No.419 in case of ***Vijay Madanlal Choudhary v/s. Union of India***<sup>4</sup> were reproduced. Giving a benefit under Section 436-A of the Code will depend upon the facts of that case and relief can be considered on a case to case basis.

What we can gather is, even though Section 436-A provides a separate right, ultimately whether benefit can be given or not depends upon the facts and circumstance of the case. Though this judgment is cited on behalf of the Applicants, Mr.Venegavkar emphasized on this observation and submitted that '*no benefit can be granted*

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<sup>3</sup> 2023 SCC OnLine SC 1486

<sup>4</sup> 2022 SCC OnLine SC 929

*to these Applicants’.*

28. ***Manish Sisodia v/s. Central Bureau of Investigation***<sup>5</sup>

When there was an assurance given on behalf of the Prosecution to conclude the trial within a specific time limit, immediately bail was not granted but liberty was granted to move again in future.

In Para No.27, the Hon’ble Supreme Court considered the observations in case of ***P. Chidambaram v/s. Directorate of Enforcement***<sup>6</sup>. The earlier judgments reiterating ‘*right to speedy trial*’ as a fundamental right was considered. The primary object while dealing with the bail is to secure the presence of the Accused at the time of trial. Even, the observations in case of ***Vijay Madanlal Choudhary*** (supra) to the effect of **Section 436-A of the Code can apply to offence under PML Act** were also reproduced. *(Emphasis supplied)*

After taking conspectus of the judgments, the Hon’ble Supreme Court observed thus:-

*“In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in*

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<sup>5</sup> 2023 SCC OnLine SC 1393

<sup>6</sup> (2020) 13 SCC 791

*Arnab Manoranjan Goswami v. State of Maharashtra*<sup>7</sup>, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.” (Para No.27). (*Emphasis supplied*)

29. *Vijay Madanlal Choudhary and Others v/s. Union of India and Others*<sup>8</sup>

- (A) Both the sides referred to observations in different paragraphs. The provisions of PML Act were challenged on the ground of validity. The following observations are relied upon by Mr.Ponda and Mr.Nimbalkar.
- (i) “In the event the person named in the criminal activity relating to a scheduled offence is **finally absolved** by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, **there can be no action for money-laundering.....**” (Para No.253).
- (B) **Mr.Ponda and Mr.Nimbalkar invited my attention to the observations in Para No.413.** While dealing with the applicability of Section 436-A of the Code to the offences under PML Act, it was observed:-
- (ii) “There is, however, an **exception carved out to the strict compliance of the twin conditions in the form of Section**

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<sup>7</sup> (2021) 2 SCC 427

<sup>8</sup> 2022 SCC OnLine SC 929

*436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail.....”*

(C) **Mr.Venegavkar invited my attention to observations in Para No.272** wherein, Hon’ble Supreme Court has dealt with a threat of money-laundering to the financial system and observed:-

(iii) *“.....Thus, the onus on the Government and the people to identify and seize such money is heavy. If there are any proactive steps towards such a cause, we cannot but facilitate the good steps. However, passions aside we must first balance the law to be able to save the basic tenets of the fundamental rights and laws of this country.....”. (Para No.272).*

(D) Further, **Mr.Venegavkar invited my attention to observations in Para No.395.** The contention raised that money-laundering is less heinous offence than offence of terrorism was rejected. The object behind enacting PML Act was reiterated. The recommendation of the Law Commission in 47<sup>th</sup> Report increasing the punishment was also referred.

The material observations are:-

(iv) *“Further, the quantum of punishment for money-laundering offence, **being only seven years, cannot be the***

*basis to undermine the seriousness and gravity of this offence. The quantum of sentence is a matter of legislative policy. The punishment provided for the offence is certainly one of the principles in deciding the gravity of the offence, however, it cannot be said that it is the sole factor in deciding the severity of offence as contended by the petitioners. **Money-laundering is one of the heinous crimes**, which not only affects the social and economic fabric of the nation, but also tends to promote other heinous offences, such as terrorism, offences related to NDPS Act, etc.”*

(E) **Mr.Venegavkar invited my attention to the observations in Para No.416. Those are:-**

(v) *“.....Thus, it would not be appropriate to **deny the relief of Section 436A** of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. **However, Section 436A of the 1973 Code, does not provide for an absolute right** of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the **Court may still deny the relief owing to ground, such as where the trial was delayed at the instance of accused himself.**”*

(F) In Para Nos.417 to 419, the Hon'ble Supreme Court commented as to how bail under Section 436-A of the Code is different from a default bail under Section 167 of

the Code. The Supreme Court emphasized:-

- (vi) On not granting a benefit under Section 436-A of the Code by way of wholesome relief. **It cannot be granted mechanically.** There is a discretion still reserved for the Court and relief can be considered **on case to case basis.** Detention can be continued even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions to ensure the availability of the accused during trial.

*(Emphasis supplied)*

30. ***Satender Kumar Antil v/s. Central Bureau of Investigation and Another***<sup>9</sup>

- (A) The Hon'ble Supreme Court has dealt with all the aspects of various provisions for bail in the Code of Criminal Procedure, and the obstacles and hurdles and mindset of stakeholders in recognizing such right. The relevant paragraphs in which the provisions of Section 436-A are referred are in paragraph Nos.63 and 64. **The word 'trial' has to be given expanded meaning and it also includes the appeal or admission.** The word 'shall' denotes mandatory compliance of this provision. **Even, Hon'ble Supreme Court went to the extent of dispensing with the necessity of filing a bail application. But, the delay should not be attributable to the accused.**

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9 (2022) 10 Supreme Court Cases 51

It is further observed:-

*“However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. The only caveat as furnished by the Explanation being the delay in the proceeding caused on account of **the accused to be excluded.**”*

The observations by Hon’ble Supreme Court in case of ***Bhim Singh v/s. Union of India***<sup>10</sup>, are also reproduced.

Finally, depending upon the nature of punishment, directions are given to grant bail to Accused, if he is in jail for a particular period. However, it was clarified that person accused of NDPS offences will not be benefited by this order. At the same time, the discretion under Section 37 of NDPS Act was not affected.

These are all the observations reproduced in Para No.88 from the judgment in case of Legal Aid Committee v/s. Union of India.

While dealing with economic offences, it was observed in Para No.19 in ***Satender Kumar Antil*** (supra) that :-

*“The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined under Article 21 and 22 of the Constitution of India. The provisions governing clearly exhibited the aforesaid intendment of the Parliament.” (Emphasis laid)*

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<sup>10</sup> (2015) 13 SCC 605

The observations in case of *P.Chidambaram v/s. Directorate of Enforcement* (supra) were also referred.

The factors which govern the '*right to bail*' are:-

- (a) Gravity of offence,
- (b) Object of Special Court

And

- (c) Attending circumstances and period of sentence.

Economic offence cannot be classified as a special class because it may involve various activities and may differ from one case to another. It is further observed:-

*"It is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis."*

Mean to say, if bail is asked involving 'economic offence', the issue needs to be decided on the facts and circumstances.

31. There are few other judgments relied upon. I have only referred the observations in prominent judgments. In rest of them, it is reiteration of the above principles.

### **Analysis**

32. After going through all these judgments, one can very well say that benefit of Section 436-A of the Code cannot be denied merely on the basis that allegations are serious. If the conditions are fulfilled, the Court is bound to give the benefit. Only the factors like the allegations,

time required to be taken for conduct of the trial need to be considered. It is but natural for the Prosecution to take sometime for conduct of trial. At the same time, it is but natural that the Accused still remain in jail for a longer period. **Ultimately, the Court has to balance in between the rights of both the contesting parties.**

### Conduct of trial

33. In order to buttress his submission, that the trial of '*scheduled offences*' will take first and then, trial of PMLA offences, Mr.Ponda relied upon following judgments:-

- (i) *V. Vijay Sai Reddy v/s. Enforcement Directorate*<sup>11</sup>
- (ii) *Jagati Publication Ltd. v/s. Enforcement Directorate*<sup>12</sup>
- (iii) *Md. Naushad v/s. State of Bihar and Another*<sup>13</sup>
- (iv) *Anosh Ekka v/s. State of Jharkhand through Directorate of Enforcement*<sup>14</sup>

34. Whereas, Mr.Venegavkar still insist that trial under PML Act will have to be given preference as the Court is established under the PML Act. He admits that there is no observations upholding his contention by any Court. It will be relevant to consider the observations in those

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<sup>11</sup> 2022 SCC OnLine TS 1606

<sup>12</sup> 2022 SCC OnLine TS 1607

<sup>13</sup> 2019 SCC OnLine Pat 552

<sup>14</sup> Cr.Rev.No.699 of 2011 : 19<sup>th</sup> February 2013 : High Court of Jharkhand at Ranchi

judgments.

35. In all these judgments, though pronounced in different matters, the cases were instituted for '*scheduled offence*' as well as offence under the PML Act. The parties are the same. There were discharge Applications filed. They were rejected and that is why, the matter went before the High Court. After considering the provisions of PML Act, it was observed in Para No.52 that even though the trial for both these offences may start, still the Special Court should wait for the decision in a trial involving the '*scheduled offence*'. It was argued that the first trial of '*scheduled offence*' will be conducted and then, trial of PMLA offence will be conducted. They want to suggest that if the trial will be conducted in such a manner, there is no assurance when the trial for PMLA offence will start and that is how, they have taken it as an additional ground for bail under Section 436-A of the Code. Whereas, Mr.Venegavkar emphasized that the Special Court is constituted for trying PMLA offence and hence, PMLA trial will start first.

36. It is true that the Explanation to Section 44 lays down two issues. They are:-

(a) Jurisdiction of a Special Court is not depending upon any

order passed in respect of '*scheduled offence*'. It means, the Legislatures have intended that the investigation, enquiry and trial can go on irrespective of the investigation, enquiry and trial in '*scheduled offences*'.

- (b) A trial for both these offences by the same Court shall not be construed as a joint trial.

37. The word '*joint trial*' is not defined anywhere in the Code of Criminal Procedure. In ordinary parlance, it is construed as a '*joint trial*' of several Accused. It may be for the purpose of framing of charge. Such issue may also arise when there are counter cases against each other. Both these cases also need to be tried separately even though it may be by the same Judge. By inserting this provision, the Legislatures want to suggest that the trial of '*scheduled offences*' and trial of PMLA offences will have to be conducted independently though by the same Judge.

38. Question arises, whether a decision of one case will affect the decision of another case. As per Section 3 of the PML Act, anyone involved in the process of proceeds of crime, it is an offence. The '*scheduled offences*' are the offences laid down as per the schedules. The scheme of the Act does not suggest that there can be an

investigation for PMLA offences only when there is a conviction in a trial involving the '*scheduled offences*'. A person accused of PMLA offence may contend that unless it is proved that the proceeds alleged by the Enforcement Directorate were derived from the criminal activity is proved, they cannot be convicted.

39. **The issue before this Court is only about grant of bail and not about discharge or quashing.** So, I think, the issue need not be far stretched, so that, this Court will give some observation about the interpretation of the provisions of PML Act. It can be done in an appropriate case. For these Bail Applications, the issue is only when the trial of PMLA offences is going to start. When we have read the provisions and even the observations by various High Courts, one can infer that the trial in PMLA offence can be simultaneously with trial of '*scheduled offences*'. The first part of Explanation to Section 44 is clear.

40. Now, the question is when the trial of PMLA offences in this case will be started. A '*draft charge*' is already filed on behalf of the E.D. It is true that yet the Special Court has not proceeded further after framing of charge, that is to say, hearing the Prosecution and hearing

the respective Accused persons. If there are discharge Applications, the Special Court is required to decide them. There are in all 38 Accused persons. One does not know when this pre-charge formalities will be completed. It is true that all these complaints consist of thousands of pages and there will be number of witnesses. So, the trial will be going to take its own time. **The issue is, whether the Applicants can be detained in jail just because the allegations are serious in nature ? The answer is 'No'.**

41. Because it is not certain when the trial will start and it will be over. Furthermore, even if trial of both the cases will start simultaneously, still the judgement in PMLA case will not be pronounced till the time, the judgement in trial involving '*scheduled offence*' will be pronounced. I have taken this view on the basis of interpretation given by various High Courts and Supreme Court in case of *Vijay Madanlal Choudhary*'s case (supra).

#### Statistics

42. With this view in mind, I have asked learned Registrar General of this Court to call the report from the trial Court on certain aspects that is in respect of the pendency (of PMLA and scheduled offence),

the staff deputed for doing scrutiny of the papers of present case, time required for that scrutiny and when trial of these offences will start.

The learned Registrar General of this Court was pleased to call that information and place it before me in confidential envelope. I have perused it.

43. No doubt the statistic is available on the website of the City Civil Court as such it is not confidential but ultimately when Court calls it, and when get an authenticated information about the statistics, Court does not want that it should be used by any one for the purpose other than the issue involved in this case. That is why, I deem it proper not to place this statistics on record. But EOW/ED being the primary investigating unit/agency, they must be fully aware about the pendency for both the types of the cases before the Special Court. When I have perused those statistics, I have also felt that the future of trial of this case, will be in doldrum.

44. So under such situation can we detain the Applicants behind bar for a period which no one can definitely predict. EOW through learned APP and ED through their Advocates have not given any assurance to the Court about likelihood of completion of the trial in near future and

how much time it will take for completion.

### **Conclusion**

45. It is true that in entire administration of Criminal Law various stake holders are involved. The responsibility on investigating agency and on the Courts is onerous. Firstly, it is the duty of investigating agency to investigate properly and to collect materials and to submit it in the Court. The responsibility of the Court starts later on. It is true that there is time limit fixed for completion of investigation. Even if the charge-sheet/complaint is filed, still depending upon the magnitude of the offence, the trial continues. There are two sides. One is prosecution and another is defence. Court has to hear both of them. And it is bound to take time. The availability of Judges is also important. Disposal also depends on co-operation of defence. But paramount consideration is number of Court dealing with such cases. If it is less, trial is going to take time. It has happened in both these cases also. It is but natural that it will take long time for completion of the cases considering the procedure required to be followed. One cannot deny the fact that considering the statistics received by me, it is uncertain when the trial will start. Hence in such a situation we cannot

deprive a person of his personal liberty.

46. It is no doubt true that E.D., has filed '*draft charge*'. Same time, it is also true that framing a charge is not an empty formality. The Special Judge has to satisfy himself that ingredients of an offence are prima facie satisfied. Both the parties need to be heard. At the same time, this Court has noticed that Accused have a tendency to file meritless discharge Applications. Even there is a tendency to file meritless discharge Revisions challenging refusal prayers. Ultimately, Court seized of the matter (either trial Court or this Court) is required to deal with the issues raised confidently and more important, sternly.

47. In this exercise, there is also onerous responsibility on the prosecuting Agency by remaining vigilant. If their case is not progressed (due to pendency), they are not remedyless. They can request the head of that establishment (i.e. Principal Judge) to assign the case to another Court. Ultimately, running of a system is collective responsibility. The defense Counsels have also a role to play. On one hand, they have got every right to protect the interest of their clients and at the same time, they have to come forward for early disposal of the case. Because, they are also part and parcel of the system. And the

system must work. Defence Counsels are also part of the same Society for betterment of which system is created.

48. Unfortunately, nothing has happened of the sort mentioned above. I have no alternative to grant them bail on this ground.

However, this Court cannot shut its eyes and will only decide these Bail Applications.

49. Question is amount of bail. As said above, there is allegation of misappropriation of crores of rupees. Both the Applicants are the recipients of this amount. They are having good financial condition. Their presence at trial need to be secured. Hence I am inclined to determine amount of bail on higher side (other than usual case).

50. It is true that this order is going to be cited by any of the parties. That is why, I want to make two aspects clear. This Court has made these observations on the basis of contentions raised and materials pointed out. They are not final observations. When issues will come before Courts, it is made clear that these observations are restricted to present issues and only made for deciding Bail Applications. Furthermore, it is made clear that even if this order is cited before any Court, the concerned Court is duty bound to deal with the issue of bail

considering the nature of allegations and materials placed.

General directions

51. At this juncture, I also deem it proper to give certain directions to learned Registrar General of this Court who is supposed to look into issues faced by the trial Court on administrative side in the State of Maharashtra.

52. **This Court expects learned Registrar General to take stock of the situation** particularly from the City Civil Court about total pendency, staff deputed in that process and number of judges assigned to scheduled offence alongwith PMLA offence. So if the City Civil Court administration is facing with some difficulties, learned Registrar General with all his experience and responsibility can try to solve the problems and he may also seek necessary directions from the Hon'ble Chief Justice. These observations are made only for mitigating problems faced by the prosecuting agency as well as by under trial prisoners. It may happen that due to intervention of learned Registrar General, the City Civil Court administration may be boosted to deal with huge pendency for scheduled and PMLA offence.

53. With these observations, I pass the following Order:-

O R D E R

- (i) Both Bail Applications i.e. Bail Application No.3377 of 2023 and Bail Application No.3867 of 2023 are allowed.
- (ii) Applicant–Sarang Wadhawan and Applicant–Rakesh Kumar Wadhawan arrested in connection with ECIR No.ECIR/MBZO-I/09/2019 dated 3<sup>rd</sup> October 2019 registered with Enforcement Directorate – Mumbai for the offence punishable under Sections 3 and 4 of PML Act, 2002 in proceeding PMLA Special Case No.8 of 2019 and now pending before Designated Special Court under the PML Act, 2002 be released on bail on furnishing Personal Bond and Surety Bond of Rs. 5,00,000/- (Rupees Five Lakhs Only) each.
- (iii) They are directed not to leave the State of Maharashtra unless any justifiable reason is there and that too, with taking prior permission of trial Court.
- (iv) They are directed not to threaten the Prosecution witnesses and allure them in any manner.
- (v) They are directed to attend the trial Court punctually.
- (vi) They are directed to surrender the passport to the EOW/ED, if they have not earlier surrendered.
- (vii) Learned Registrar General to interact with learned Principal Judge, City Civil Court about : pending

matters involving under PML Act and scheduled offences (on the aspect of availability of staff and deputation of requisite number of Judges and connected issue).

- 54. Bail Applications are disposed of.
- 55. Pending Interim Application, if any, stands disposed of.

[S. M. MODAK, J.]

56. After pronouncement of the order, learned Senior Advocate Shri.Ponda requested that for limited duration, cash bail be allowed. Because, it will take time for arranging the surety. It is opposed by learned Advocate Shri.Venegavkar.

57. The prayer for cash bail cannot be allowed. There is a purpose behind insisting for surety bail and that too, heavy surety. Because, the presence has to be secured. Hence, it is rejected.

[S. M. MODAK, J.]