

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2494 OF 2024**

Naresh Goyal ... Applicant
versus
Directorate of Enforcement and Anr. ... Respondents

Mr. Abad Ponda, Senior Advocate with Mr. Ameet Naik, Mr. Abhishek Kale, Ms. Yugandhara Jha, Mr. Vivek Raja, Mr. Harish Khedkar, Mr. Aditya Ajgaonkar, Mr. Nevil Chopra, Ms. Rebecca Singh, Ms. Antara Kulkarni i/by Naik Naik and Co., for Applicant.

Mr. H.S.Venegavkar with Mr. Aayush Kedia, for Respondent No.1.

Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 21 OCTOBER 2024

PRONOUNCED ON : 11 NOVEMBER 2024

P.C.

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 the offence 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 120-B, 420, 409 of the Indian Penal Code 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 to enlarge him on bail, on medical ground.

2. This application is a sequel to an earlier application, being BA No.1901

of 2024, wherein by an order dated 6 May 2024, this Court had ordered release of the applicant on interim bail for a period of two months. By orders dated 5 July 2024, 31 July 2024 and 23 September 2024, the order of interim bail has since been extended.

3. At the outset, it may be imperative to note that, while releasing the applicant on interim bail, this Court had elaborately considered the aspect as to whether the case of the applicant falls within the ambit of the proviso to Section 45(1) of the PMLA, the legal import of the said proviso and the reasons which weighed with this Court in exercising the discretion to release the applicant on bail. It would suffice to extract the observations in paragraphs 11 to 15, which deal with the effect and import of the proviso to Section 45(1) of the PMLA, and paragraphs 28, 29, 32 and 33, which advert to the personal attributes and the then situation in life of the applicant rendering him both sick and infirm. They read as under :

“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.

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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.

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.”

4. In the instant application, the applicant avers, inter alia, that the applicant continues to suffer from various ailments including malignant duodenum neuro-endocrine tumor, which is life threatening and requires treatment, including surgical intervention. The wife of the applicant was diagnosed with cancer in April 2023 and she passed away on 16 May 2024. The death of his wife has rendered the applicant emotionally incapacitated and unable to tend to his own ailing health. In these circumstances, to keep

the applicant in incarceration and subject him to a highly strenuous environment is a gross violation of the rights of the applicant. It violates the constitutional guarantee of right to life and personal liberty under Article 21 of the Constitution.

5. The Medical Officers have consistently opined that the applicant is not in a condition to undergo an extremely high risk Whipple's surgery on account of his debilitating health and severe emotional distress caused by the death of his wife. Hence, the applicant be enlarged on bail by invoking the proviso to Section 45(1) of the PMLA.

6. An Affidavit in Reply has been filed on behalf of the Respondent No.1. At the outset, advertent to the gravity of the offence of money laundering and its grave ramifications on the financial system of the country and also integrity and sovereignty of the State, the Respondent No.1 contends that the prayer for bail purely on medical ground, *de hors* the gravity of the allegations against the applicant, cannot be countenanced. If the applicant is enlarged on bail, there is an imminent threat of the applicant fleeing away from justice, and, thereby hampering further investigation and the trial of the instant case. There is also possibility of threatening the prosecution witnesses and tampering with the evidence. At any rate, the applicant has to fulfill the twin conditions under Sections 45(1) of the PMLA before he is enlarged on bail. Since those twin conditions are not *prima facie* fulfilled, the applicant does not

deserve to be released on bail even on medical grounds.

7. The contention of the applicant that he is sick and infirm is sought to be controverted. It is contended that the applicant has been provided requisite medical treatment at the hospital of his choice. The applicant can continue to have requisite treatment as an in-door patient at the hospital of his choice as and when warranted.

8. I have heard Mr. Ponda, learned Senior Advocate for the Applicant and Mr. Venegavkar, learned Special PP for Respondent No.1.

9. Mr. Ponda, learned Senior Advocate for the Applicant, submitted that in a series of recent judgments, the Supreme Court has emphasised that if the case of the accused falls within the ambit of the proviso to Section 45(1) of PMLA, the benefit of the said proviso ought to be extended. In that case, it is not necessary that the twin test envisaged by Section 45(1) of the Act, must be fulfilled. To take such view would defeat the very object of the said proviso.

10. Mr. Ponda placed reliance on the decision of the Supreme Court in the **Kalvakuntla Kavitha V/s. Directorate of Enforcement**¹, **Manish Sisodia V/s. Directorate of Enforcement**² and an order passed by this Court in the case of **Abhay Narendra Lodha V/s. Directorate of Enforcement and Anr.**³ Reliance was also placed on an order in the case of **Manoharlal Agicha V/s.**

1 2024 SCC Online SC 2269

2 2024 SCC Online SC 1920

3 BA No.2838 of 2024 dt 10 Sept. 2024

Union of India and Anr.⁴. Lastly, attention of the Court was invited to an order passed by the Supreme Court in the case of **Amar Sadhuram Mulchandani V/s. Directorate of Enforcement and Anr.**⁵

11. Mr. Ponda also invited attention of the Court to the certificates issued by the specialists to bolster up the case that the applicant continues to remain sick and infirm. Given the nature of the ailments the applicant is suffering from and the emotional distress on account of the death of his wife, the Medical Officers have opined that the Whipple's surgery is not advisable until there is an improvement in the health status of the applicant. In these circumstances, the applicant deserves to be enlarged on bail, urged Mr. Ponda.

12. In opposition to this, Mr. Venegavkar, learned Special PP fairly submitted that, at this stage, the Respondent No.1 may not seriously dispute that the applicant is a sick person. Since the applicant is already on interim bail, the applicant can continue to have treatment and need not surrender immediately. However, once the applicant recovers, he must surrender and, thereupon, the prayer for bail can only be considered on the parameters set out in Section 45(1) of the PMLA.

13. Mr. Venegavkar would urge that in the case of **Amar Sadhuram Mulchandani (supra)**, the Supreme Court has directed release of the

4 BA No.3700 of 2024 dated 16 Oct. 2024

5 SLP(Crl) No.11376 of 2024 dated 14 October 2024

accused therein on interim bail and, thereupon, the Special Court (PMLA) has released the said accused on bail for a period of three months. Therefore, according to Mr. Venegavkar, there is no occasion for considering the prayer of the applicant for regular bail.

14. As noted above, this Court has elaborately considered the nature of ailments the applicant has been suffering from, the preferred line of treatment and the risk associated with the Whipple's surgery. In the face of the said material, especially the fact that the applicant has been suffering from duodenum neuro-endocrine tumor and the spread of malignancy, this Court opined that it would have been audacious to hold that the applicant was not sick.

15. As noted above, Mr. Venegavkar fairly submitted that it may not be disputed that the applicant is sick. In the aforesaid view of the matter, the situation which has emerged after the applicant was released on interim bail, assumes critical salience.

16. Under 10 days of the release of the applicant on bail, the wife of the applicant, who was suffering from cancer, passed away. The Medical Officers have opined that the death of his wife has further emotionally incapacitated the applicant.

17. Dr. Dev B. Pahlajani, Interventional Cardiologist, by his report dated 16 September 2024, after referring to the severe emotional and depression

issues and other co-morbidities, has opined that in view of the pre-existing accelerated atherosclerotic heart disease and the extensive nature of the surgery needed for his neuroendocrine tumor, the surgery will have a significant risk of morbidity and mortality. He should be regularly assessed every three months.

18. Dr. Sanjay Sharma. Senior Surgical Oncologist, attached with Lilavati Hospital and Research Center in his Certificate dated 10 August 2024 certifies as under :

“Seeing all his investigation and poor general condition, and weakness, I am of the opinion that with his multiple comorbidities and the illness he has he needs utmost care and repeated follow ups for the problems with careful monitoring of his condition and symptoms till such time his general condition improves and a corrective surgery (Whipples procedure) can be contemplated. This will require to be reassessed every three months. Considering the above medical ailments he has, a complex surgery like Whipples procedure is at the moment is high-risk and he needs to be under strict surveillance on a regular basis with his medical team to prevent any major situation to deteriorate his condition further and be reasonably fit for the surgery.”

19. Dr. Amish V. Dalal, Cancer Specialist, has, in the Certificate dated 14 September 2024, opined as under :

“Currently he is on Octrotide therapy under the care of Dr. Sweanti Limaye at Reliance Foundation Hospital. However, this therapy is not expected to be curative and will only palliate the system symptoms of the tumour. The only potentially curative

treatment for this type of cancer is surgery. The surgery required is a pancreas-duodenectomy (Whipple's operation). However, this is easily one of the most major abdominal surgeries and has a high morbidity and mortality rate. To minimise complications and potential risk of dying post operatively ideally the patient has to be optimised medically. In view of Mr. Goyal's current mental health and his multiple preexisting medical problems it is taking long to optimise him. In the current state he is unlikely to be able to withstand this type of an operation.

I recommend he continue to be under medical supervision with his current physicians, medical oncologist and mental health specialists until he is fit for any surgical intervention. He also needs very good nutrition and nutritional support during this time."

20. Dr. Jamshed D. Sunavala, Director, Critical Care, Jaslok Hospital and Research Centre, Mumbai, has opined that given the complexity of medical situation of the applicant, in his professional assessment, the applicant is presently unfit to undergo an extensive surgical procedure due to the high risk of serious postoperative complications. The applicant would require close monitoring, emotional counselling and medical optimisation over the next few months before he can be considered fit for high risk surgery.

21. The aforesaid opinions of the specialists underscore the fact that the medical condition of the applicant has not improved. The applicant has been suffering from various ailments and co-morbidities. The preferred line of treatment for duodenum cancer is Whipple's surgery. Given the current complexities exhibited by the applicant, Whipple's surgery is considered to

carry high risk of morbidity and mortality. To add to this, the passing away of the wife of the applicant, in the opinion of the medical experts, added to the emotional distress. Prima facie, it appears that the applicant is both sick and infirm. Sick due to duodenum cancer. Infirm on account of advanced age, serious ailments and the emotional distress brought about by the situation in life which the applicant finds himself in.

22. At this stage, a profitable reference can be made to a recent decision of the Supreme Court in the case of **Kalvakuntla Kavitha V/s. Directorate of Enforcement (supra)**, wherein the Supreme Court delineated the approach to be adopted in the matter of application of the proviso to Section 45(1) of the Act. The Supreme Court enunciated that the proviso to Section 45(1) would entitle a woman for special treatment while her prayer for bail is being considered. The approach to be adopted in the matter of giving benefit of the proviso was expounded as under :

“16. A perusal of the above proviso would thus reveal that the proviso permits certain category of accused including woman to be released on bail, without the twin requirement under Section 45 of the PMLA to be satisfied. No doubt that, as argued by the learned ASG, in a given case the accused even if a woman may not be automatically entitled to benefit of the said proviso and it would all depend upon the facts and circumstances of each case.
17. However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied.” (emphasis supplied)

23. In my considered view, the aforesaid enunciation of law implies that if it is demonstrated that the person accused of an offence under the PMLA falls within the ambit of the proviso, special consideration in the matter of grant of bail ought to be the norm and if the Court proceeds to deny the benevolent prescription afforded by the Parliament, the Court is required to give specific reasons as to why the particular accused is denied the benefit thereof.

24. I find it rather difficult to accede to the submission of Mr. Venegavkar that the release of the accused, by invoking the proviso to sub-Section (1) of Section 45 of the PMLA, can only be for a temporary period or by way of an interim bail. It is true, in the case of **Amar Sadhuram Mulchandani (supra)**, the Supreme Court directed the release of the applicant therein on interim bail. However, the said order, it appears, came to be passed having regard to the peculiar facts of the said case.

25. If the submission of Mr. Venegavkar is taken to its logical end, then the proviso can only mean that, the accused can be released on bail only during the period he is sick. Such a construction would do violence to the plain and unambiguous language of the proviso to Section 45(1) of the Act and cannot be countenanced.

26. In my view, the question as to whether the person falls within the ambit of the proviso to Section 45(1) i.e. whether he is sick or infirm has to be

determined at the stage of consideration for bail. Once the Court finds that the accused falls within the ambit of the said proviso, then the order of release on bail would enure, even if subsequently the accused recovers from the sickness or infirmity.

27. In the case at hand, in the light of the consideration which weighed with this Court in granting interim bail and the subsequent material on record which indicates that the applicant continues to be sick and infirm, I am inclined to make the order of interim bail absolute on the terms and conditions incorporated therein.

28. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The order of interim bail dated 6 May 2024, in BA No.1901 of 2024, which has been continued by the subsequent orders, is made absolute on the terms and conditions incorporated therein.

Application disposed.

(N.J.JAMADAR, J.)