

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2838 OF 2024

Abhay Narendra Lodha ... Applicant

Vs.

Directorate of Enforcement and another ... Respondents

Mr. Saurabh Kirpal, Senior Advocate a/w. Mr. Ameet Naik, Mr. Niranjana Mundargi, Mr. Abhishek Kale, Ms. Neeha Nagpal, Mr. Vishvendra Tomar, Mr. Harish Khedkar, Mr. Keval Mehta and Ms. Shalvika Nachankar i/b. Naik Naik & Company for Applicant.

Ms. Neha Bhide, SPP for Respondent No.1 - ED.

Ms. Rutuja A. Ambekar, APP (through VC) for Respondent No.2 - State.

CORAM : MANISH PITALE, J.

DATE : SEPTEMBER 10, 2024

P.C. :

. Heard Mr. Kirpal, learned senior counsel appearing for the applicant and Ms. Bhide, learned special public prosecutor appearing for respondent No.1 - Enforcement Directorate (ED).

2. The applicant has approached this Court seeking bail in connection with Special Case No.1706/2023 arising out of ECIR No.ECIR/MBZO-I/06/2022. The applicant was arrested on 30.08.2023 in connection with the aforesaid ECIR and he has remained incarcerated since then, except for a brief period when the Special PMLA Court granted interim bail to the applicant, which was continued by this Court during the pendency of the present application.

3. The present application is being pursued purely on the ground of the medical condition of the applicant and hence *proviso* to Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA) is being pressed into service. The learned senior counsel appearing for the

applicant submits that the material placed on record of the application and even the observations made by the Special PMLA Court in its orders sufficiently makes out a case of the applicant as being sick and infirm, which, in itself, is a ground for being enlarged on bail as the rigors of the twin test under Section 45 of the PMLA do not apply in such cases. In fact, the nature of submissions made before this Court is limited to the aforesaid aspect of the matter and the merits of the case of the applicant are not even touched upon.

4. It is submitted that in an earlier order dated 12.04.2024 passed by the Special PMLA Court, while directing hospitalization of the applicant and granting partial relief to him, the presiding officer of the said Court had an occasion to personally see the medical condition of the applicant. The observations made in the said order indicate the seriousness of the conditions suffered by the applicant. Subsequently, in the order dated 27.06.2024, whereby the Special PMLA Court directed to release the applicant on interim medical bail for a period of one month, observations were made in respect of the medical condition of the applicant after taking into consideration the plethora of documents placed on record on behalf of the applicant. It is submitted that the aforesaid Court fell in error in granting only limited relief of interim medical bail for a period of one month, when the application ought to have been allowed in its entirety, in the light of the material placed on record.

5. The learned senior counsel appearing for the applicant places emphasis on the documents on record, including discharge summaries, which show that the applicant has already suffered at least seven instances of seizures between February 2024 and June 2024, indicating the serious health issues suffered by the applicant. It is submitted that the stress of remaining in judicial custody would increase the risk to the

applicant's life and this is also evident from the report submitted by the hospital where the applicant has been undergoing treatment, as well as the report on which the respondent ED relies, copy of which is annexed to the reply affidavit.

6. It is further submitted that if the present application is not allowed, despite the material placed on record in support of the health condition of the applicant, it would mean that the *proviso* to Section 45 of the PMLA is not being given due importance. It is submitted that the aforesaid *proviso* also recognizes other special categories, including the category of 'women'. In a recent order passed in the case of *Kavakuntla Kavitha Vs. Directorate of Enforcement*, **2024 SCC OnLine SC 2269**, the Supreme Court has emphasized upon the need to give appropriate effect to the special treatment afforded to a certain category of accused in the Statute. It is submitted that, therefore, this Court may allow the present application.

7. On the other hand, Ms. Bhide, learned special public prosecutor submits that the report dated 16.07.2024 issued by J. J. Hospital annexed to the reply affidavit indicates that although the applicant has given the history of seizures in the past few months, as on today, his blood pressure appears to be normal and he is advised regular check up by general physician, which can be undertaken even in a Government hospital during the period of judicial custody of the applicant. It is brought to the notice of this Court that proceedings in the predicate offence have been stayed by this Court and charge-sheet is yet to be filed therein. Therefore, the stage of moving an appropriate application under Section 44(1)(c) of the PMLA is yet to arrive.

8. This Court has considered the rival submissions in the light of the material placed on record. A perusal of the material does indicate that the applicant has suffered ill health for considerable period of time. The

effect of the seizures that the applicant has suffered, as also brain hemorrhage as recorded in the medical documents, sufficiently indicates that the applicant cannot be said to be a healthy individual. In fact, the Special Court itself in its initial order dated 12.04.2024, recorded in paragraph 6 on personal observation, that the applicant had swelling on his face and his eye was shrunk due to the recent episode of stroke suffered in March 2024. By the said order, he was permitted to be hospitalized. Subsequently, in the order dated 27.06.2024, when the Special PMLA Court granted interim medical bail of one month to the applicant, further observations were made as regards the episodes of serious ill-health suffered by the applicant during the period of incarceration. There is substance in the contention raised on behalf of the applicant that in the face of such observations in the orders passed by the Special PMLA Court itself, relief ought to have been granted to the applicant.

9. Be that as it may, this Court has independently considered the documents on record and it is found that the applicant indeed has a history of brain hemorrhage and repeated seizures suffered even during the period between February 2024 and June 2024. In fact, details of seven such seizures have been given by the applicant in the present application with supporting medical documents. The learned SPP has fairly submitted that instances of seizures are not disputed. It is relevant to note that in the medical summary issued by the treating doctors in the hospital, where the applicant has undergone treatment, it was observed on 19.06.2024 as follows:-

“The patient has a history of brain haemorrhage and is having AV malformation, which is a situation wherein the surrounding brain tissues do not get enough oxygen.

The blood vessels being tangled in an AV malformation do not form properly, can lead to weakening and rupture causing bleeding in the brain, stroke or brain damage.”

10. The above-quoted portion of the medical summary clearly indicates an abnormal condition, which has increased the possibility of rupture of blood vessels, which in turn can cause bleeding, leading to strokes suffered by the applicant.

11. The report of the J. J. Hospital dated 16.07.2024, upon which the learned SPP has placed reliance, also records that the peculiar medical condition suffered by the applicant is suggestive of an abnormal EEG. In fact, the said report suggests medicines to be continued and medical follow up to be ensured.

12. The aforesaid material does indicate that the applicant clearly falls within the category of 'sick' or 'infirm' as categorized in *proviso* to Section 45 of the PMLA. The Supreme Court in the case of **Kavakuntla Kavitha Vs. Directorate of Enforcement** (*supra*) has emphasized upon the fact that when certain categories are identified by Statute for giving special treatment, if at all benefit of such category is to be denied, the Court is required to give specific reasons. In the present case, in the face of the material on record, this Court finds enough reasons to give relief to the applicant by holding that he does fall in the category of 'sick' or 'infirm' under the *proviso* to Section 45 of the PMLA. Once such a conclusion is reached, the statutory intent specified in the *proviso* to Section 45 of the PMLA has to be given its full play and hence the applicant has made out a case in his favour for being enlarged on bail. In any case, the applicant has suffered incarceration from 30.08.2023. The fact that in the proceeding concerning the predicate offence, a statement is made on behalf of the investigating authority that charge-sheet will not be filed during pendency of the proceeding, indicates that there is hardly any possibility of appropriate proceedings being moved under Section 44(1)(c) of the PMLA. This further indicates that there is no possibility of the trial commencing in the foreseeable future, much less

being completed.

13. The Supreme Court in the case of *Union of India Vs. K. A. Najeeb*, (2021) 3 SCC 713 has emphasized on the power of Constitutional courts to enlarge accused under-trials on bail when they have undergone incarceration for considerable period of time and there is hardly any possibility of the trial being completed within a reasonable time period. The said position has been followed by the Supreme Court and various High Courts, including this Court in many judgements and orders. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another* (order dated 03.07.2024 passed in **Criminal Appeal No.2787 of 2024**), the Supreme Court has emphasized upon right to speedy trial of the accused being a facet of fundamental to life under Article 21 of the Constitution of India. It has been clarified that even in cases where the accused are facing prosecution under special Statutes, as in the present case under PMLA, the Constitutional courts must exercise power to grant relief to such accused under-trials, where the possibility of completion of the trial within reasonable period of time is remote. In a recent order in the case of *Manish Sisodia Vs. Directorate of Enforcement*, 2024 SCC OnLine SC 1920, the Supreme Court has emphasized upon the said aspect of the matter, observing that where the trial in such ED matters is not likely to even commence within a reasonable period of time, the accused under-trial ought to be released on bail.

14. Therefore, apart from the fact that the applicant is clearly covered under the *proviso* to Section 45 of the PMLA, on the aforesaid aspect of the trial not commencing within the foreseeable future, the application deserves to be granted. In view of the above, the application is allowed in the following terms:-

(A) The applicant shall be released on bail in connection with

Special Case No.1706/2023 arising out of ECIR No.ECIR/MBZO-I/06/2022, on furnishing P.R. Bond of Rs.1,00,000/- with one or two sureties in the like amount;

- (B) The applicant shall remain within the jurisdiction of Greater Bombay during the pendency of the proceedings before the Special PMLA Court and he shall not comment upon or discuss any matter related to the proceeding arising out of the aforesaid ECIR in media or social media during the pendency of the proceedings;
- (C) The applicant shall surrender his passport before the Special PMLA Court, if not already surrendered;
- (D) The applicant shall furnish his contact details and mobile numbers of his own and of his close relative to the investigating officer and shall always be reachable to the investigating officer;
- (E) 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;
- (F) The applicant shall not indulge in any activity similar to the activities on the basis of which the applicant stands prosecuted;
- (G) 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;
- (H) 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;

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

15. It is clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

16. The application stands disposed of accordingly.

(MANISH PITALE, J.)

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