



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3700 OF 2024

Manoharlal Agicha ...Applicant

Versus

1. The Union of India
2. State of Maharashtra ...Respondents

Mr. Abad Ponda, Senior Advocate, a/w Mudit Jain, Aman Arora, i/b
A & D Legal, for the Applicant.

Mr. H. S. Venegavkar, a/w Leepika R., for Respondent No.1 – ED.

Mr. A. A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 16th OCTOBER, 2024

ORDER:-

1. The applicant, who is arraigned in PMLA Special Case No.1545 of 2023 arising out of ECIR No.28/HIU/2021 registered by the Directorate of Enforcement for an offence punishable under Section 4 of the Prevention of Money-Laundering Act, 2022 ("PMLA"), has preferred this application to enlarge him on bail primarily on the ground that he is sick and infirm.

2. The applicant is a Director of M/s. Associate High Pressure Technologies Pvt. Ltd. ("AHPT"). Deputy General Manager, Union of India, lodged a complaint with Central Bureau of Investigation, SC-II, New Delhi, alleging fraudulent transactions in the loan advanced by Union Bank of India ("Union Bank") to AHPT. Thereupon CBI registered FIR No.R0502021A0008 dated 9th June, 2021 for the offences punishable under Sections 120B, 406 and 420

of the Indian Penal Code, 1860 (“the Penal Code”) and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against AHPT and its Directors and persons associated with it, including the applicant for fraudulently causing wrongful loss to the Union Bank to the tune of Rs.149.89 Crore.

3. The gravamen of indictment against AHPT and its Directors including the applicant (A4) is that the accused in flagrant violation of the terms on which the loan was sanctioned diverted the funds received by the way of sale proceeds to various entities and thereby siphoned off funds and eventually the account of AHPT became a Non-Performing Asset (NPA).

4. Treating the said offence as a predicate offence, the Directorate of Enforcement registered ECIR/20AHIU/2021 and, post investigation, lodged a prosecution complaint alleging *inter alia* that the applicant and the co-accused indulged in the activity of acquisition, generation, layering and concealment of the proceeds of crime, though the applicant was not initially arraigned as an accused therein. The applicant came to be arrested on 10th November, 2023.

5. The applicant has preferred this application raising a slew of exceptions to the prosecution of the applicant for the offence punishable under Section 4 of the PMLA, the legality and necessity of arrest and more particularly the fact that the applicant, being 79 years of age, and suffering from various ailments, is sick and infirm,

and, therefore, deserves the benefit of the first proviso to Section 45(1) of the PMLA.

6. An affidavit-in-reply is filed on behalf of Respondent No.1 controverting the contentions of the applicant. Adverting to the role of the applicant, which has emerged during the course of investigation, respondent No.1 contends that the twin test envisaged by Section 45(1) of the PMLA has not been fulfilled. Nor the applicant can be said to be suffering from such illness as to warrant recourse to the first proviso to Section 45(1) of the PMLA.

7. In the backdrop of the aforesaid facts I have heard Mr. Ponda, the learned Senior Advocate for the applicant, and Mr. Venegaonkar, the learned Special PP for respondent No.1, at some length. The learned Counsel took the Court through the material on record.

8. Mr.Ponda submitted that the Applicant is both sick and infirm. Adverting the medical report dated 24th September 2024 submitted by the Chief Medical Officer, Central Prison Mumbai, Mr.Ponda urged that the applicant has been suffering from several and severe ailments. The applicant has been advised urethroplasty. However, the medical condition of the applicant is such that, at this advanced age of almost 80 years, surgery is considered inadvisable. Mr.Ponda laid special emphasis on the fact that the PSA Serum levels in urine are 17.8, far in excess of the normal range. Resultantly, the applicant is incapacitated from passing the urine normally. The applicant suffers from enlarged prostate and

associated complications in addition to diabetes and heart ailments. Cumulatively, at this ripe age, the applicant is unable to take care of himself and needs assistance of fellow inmates for daily pursuits. Therefore, the applicant, being incontrovertibly sick, is also infirm.

9. As the second limb of the submission, Mr.Ponda urged that the propriety of incarceration of the applicant as an under-trial prisoner is required to be judged in the light of the impossibility of the commencement of the trial in the predicate offence. Inviting the attention of the Court to the order passed by the Gujrat High Court in R/Special Criminal Application (Quashing) No.3092 of 2024 dated 6th March 2024, whereby the trial in the predicate offence, arising out of C.R. No. RC0502021A0008, has been stayed, Mr.Ponda submitted that the trial in the instant PMLA case cannot proceed as, in law, the trial in the predicate offence must precede the trial in PMLA case to have a finding of existence of, and activity connected with, the proceeds of crime.

10. To buttress the aforesaid submission, Mr.Ponda placed a strong reliance on a decision of the Supreme Court in the case of ***V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement***¹, an an order passed by this Court in the case of ***Sarang Wadhawan Vs. Directorate of Enforcement***² and an order passed by the Telangana High Court in the case of ***M/s. Jagati***

¹ Criminal Appeal No.4011 of 2024 dt. 26 September 2024.

² BA No.3377 of 2023

Publication Limited Vs. Enforcement Directorate³. Mr.Ponda thus urged that the vulnerable condition of the applicant caused by the multiple ailments, the applicant is suffering from, is further compounded by an indefinite period of possible incarceration, as the proceedings in predicate offence have been stayed.

11. Mr.Ponda further submitted that with the recent pronouncements of the Supreme Court in the cases of ***V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement*** (supra), ***Manish Sisodia Vs. Directorate of Enforcement***⁴, ***Kalvakuntla Kavitha Vs. Directorate of Enforcement***⁵, ***Arvind Kejriwal Vs. Directorate of Enforcement***⁶ and ***Prem Prakash Vs. Union of India through Directorate of Enforcement***⁷, where the Supreme Court has emphasised the primacy of constitutional guarantee under Article 21 Constitution of India over the statutory provisions, the further incarceration of the applicant would be wholly unwarranted.

12. As against this, Mr.Venegavkar, submitted that the fact that the applicant is sick, as such, may not be disputed. However, it is the degree of illness that is of significance. Taking the Court through the medical report submitted by Chief Medical Officer, Central Prison, Mr.Venegavkar, made an endeavour to urge that the applicant

³ Criminal Petition No.1072 of 2021

⁴ 2024 SCC OnLine SC 1920

⁵ 2024 SCC OnLine SC 2269

⁶ 2024 SCC OnLine SC 1703

⁷ 2024 SCC OnLine SC 2270

is not suffering from any life threatening disease. Nor any emergent medical or surgical intervention is warranted. The ailments which the applicant is suffering from are not of such a nature as to warrant the immediate release of the applicant on bail by taking recourse to the first proviso to Section 45(1) of the PMLA. In any event, the State would provide the requisite medical assistance to the applicant. If required the applicant can have treatment at a private hospital, as permitted in the past, urged Mr. Venegavkar.

13. With regard to the stay of trial in the predicate offence, Mr. Venegavkar joined issue by canvassing a submission that it is not peremptory that the trial in the predicate offence must commence and conclude before the trial in PMLA commences. There is no warrant for canvassing such a proposition if the provisions of Section 44 of the PMLA are properly construed. Therefore, the fact that the trial in the predicate offence is stayed by Gujrat High Court, cannot be a ground to seek release on bail on the count that the trial in PMLA would be indefinitely dragged.

14. I have given careful consideration to the aforesaid submissions. To begin with, it is necessary to extract the relevant part of the report submitted by the Chief Medical Officer, Central Prison Mumbai. It reads as under:

“6) **PRESENT COMPLAINTS:** Reduced Urine Output, Burning Micturition, recurrent retention of urine, abdominal pain, low back ache, knee pain, giddiness, feeling of imbalance while walking and sleeplessness.

7) **PAST HISTORY** : K/C/O Hypertension, Diabetes Mellitus, Ischemic Heart Disease H/O Cardiac Bypass Surgery, cholecystectomy, long urethral stricture and Prostatomegaly.

9) **INVESTIGATIONS DONE** : Multiple relevant investigations at Sir J J Hospital and at Holy Family Hospital USG, X-RAY, CT Scan, MCU, 2D ECHO, Angiography and various blood investigations.

12) **TREATMENT GIVEN** : Patient is continued on medication as advised by Holy family Hospital and Sir JJ Hospital. Symptomatic treatment as and when required through prison hospital.

13) **MEDICAL ADVICE** : Patient has been recommended urethroplasty to resolve his recurrent urine retention and urinary tract infection.

14) **REFERAL TO HIGHER CENTRE** : Patient has been admitted at Holy family Hospital earlier as per Hon'ble Court Order and currently is being referred to Sir JJ Hospital as required for his complains of recurrent retention of urine along with other comorbidities.

15) Patient has long urethral stricture along with prostatomegaly which cause recurrent retention of urine along with pain in abdomen which is resolved by catheterisation (4 occasions in last one month). He was recommended buccal mucosa urethroplasty or supra pubic catheter however considering the age and complication of surgery it is deferred at present. He is also suffering from cystitis (bladder infection) as a complication of urine retention as diagnosed by Urologist and continued on regular antibiotics. He has also been complaining of forgetfulness, sleeplessness, imbalance and constant dizziness for which he was started on tab. Syndopa suspecting as case of Parkinson's disease. He also complains of chest pain on walking or exertion. He also suffers from low back ache and tingling numbness over bilateral lower limbs, x-ray is suggestive of Lumbar spondylitis. His haemoglobin levels are low (8.6) for which is started on hematinic drugs. He has pain in bilateral knee joints causing difficulty to get up and sit from ground on walk stairs and needs help of fellow inmates for the same.

15. In the case of Naresh Goyal Vs. Directorate of Enforcement and Anr.⁸ this Court had an occasion to consider the import of the first proviso to Section 45(1) of the PMLA. This Court had observed as under :

“11. The legal position as regards the grant of bail in matters where a person is accused of an offence punishable under

⁸ BA No.1901 of 2024 dt. 6 May 2024

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. At this juncture, a profitable reference can be made to the recent decision of the Supreme Court in the case of ***Kalvakuntla Kavitha Vs. Directorate of Enforcement*** (supra) wherein the Supreme Court delineated the approach to be adopted by the Court in the matter of application of the proviso to Section 45(1) of the PMLA. The Supreme Court enunciated that the proviso to Section 45(1) of the PMLA 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 the 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)

17. The aforesaid enunciation of law, in my considered view, heralds a perceptible shift in the approach, in the sense that if it is demonstrated that the person accused of an offence under the PMLA falls within the ambit of the proviso, the 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.

18. It is through the aforesaid prism, the case of the applicant deserves to be appreciated. From a bare perusal of the medical report, extracted above, it becomes abundantly clear that the

applicant has been suffering from multiple ailments and co-morbidities. The medical condition of the applicant has been documented. As noted above, Mr. Venegavkar fairly submitted that the fact that the applicant is sick, can hardly be disputed. However, according to Mr. Venegavkar, it is the degree of illness which is of determinative significance.

19. In my considered view, in the facts of the instant case, the cumulative effect of the ailments and the impact thereof on the health and day to day activities of the applicant deserves to be appreciated. The fact that the applicant is unable to perform daily pursuits and needs assistance of fellow inmates is borne out not only by the aforesaid medical report but the orders passed by the learned Judge PMLA right since the day of remand, directing the authorities to provide the requisite facilities and assistance to the applicant. If the cumulative effect of the ailments, the applicant is suffering from, is considered in the light of the repetitive medical intervention necessitated during the period of incarceration, the precarious condition of the applicant becomes evident. The material on record indicates that the applicant was admitted in the hospitals on six occasions aggregating to more than 170 days. In addition, the applicant was required to be taken to J. J. Hospital for visitation and treatment on eight occasions.

20. These circumstances, if considered in juxtaposition with the age of the applicant, lend heft to the submission on behalf of the

applicant that the applicant is both sick and infirm. In the case at hand, the infirmity, it appears, is brought about by failing health and advancing age. It would be audacious to hold that, the applicant is neither sick nor infirm.

21. This leads me to the second limb of the submission of Mr.Ponda. For the purpose of determination of this application, a definitive finding on the abstract question as to whether the trial and conviction of the accused (arraigned under PMLA) in the predicate offence is peremptory, may not be absolutely necessary. Nonetheless, there can be no duality of opinion on the point that the existence of the predicate offence and proceeds of crime is a *sine qua non* to sustain the conviction under Section 4 of the PMLA.

22. A reference to the decision of **V. Senthil Balaji** (supra) would be apposite at this stage. The observations of the Supreme Court in paragraph Nos.21 and 29 illuminate the path. They read as under :

"21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of the PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future.

Therefore, we see no possibility of both trials concluding within a few years.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

23. The Supreme Court has enunciated in no uncertain terms that the absence of real prospect of commencement and conclusion of the trial in the scheduled offences, and, consequently, the PMLA offence is a decisive consideration for the grant of bail, as in such a situation the continued detention as an under-trial prisoner infringes the guarantee under Article 21 of the Constitution of India.

24. In the light of the aforesaid enunciation of law, in the facts of the case, in view of the stay in the proceedings in the predicate offence, the commencement and conclusion of the trial therein, in the immediate future, seems impracticable. It could also be urged that, there is an element of uncertainty about the very existence of the predicate offence, as the challenge thereto is subjudice before the High Court and interim relief has been granted. Resultantly, the vulnerable situation in which the applicant finds himself on account of sickness and infirmity is further exacerbated by the uncertainty as to the trial in the predicate offence. The submission on behalf of the

applicant that there is an apprehension of the trial in the instant case being dragged for an indefinite period, cannot be said to be unfounded.

25. In the cases of *Manish Sisodia Vs. Directorate of Enforcement* (supra), *Kalvakuntla Kavitha Vs. Directorate of Enforcement* (supra), the Supreme Court has held in emphatic terms that the pristine principle that, 'bail is rule and refusal is an exception', applies even to the prosecutions under PMLA. Long period of incarceration, without a real prospect of expeditious conclusion of the trial infringes upon the fundamental right guaranteed under Article 21 which overrides the statutory restrictions in the matter of grant of bail.

26. Applying the aforesaid principles to the facts of the case at hand, in the backdrop of the period of incarceration, coupled with the precarious condition of the applicant, and impossibility of the conclusion of the trial in near future, I am impelled to exercise discretion in favour of the applicant.

27. Hence, the following order:

: O R D E R :

(i) The Application stands allowed.

(ii) The Applicant – Manoharlal Agicha be released in PMLA Special Case No.1545 of 2023 arising out of ECIR No.28/HIU/2021 on bail 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 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.]