IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1701 OF 2022

Vivekanand Shankar Patil ... Applicant
vs.
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO. 92 OF 2024
IN
BAIL APPLICATION NO. 1701 OF 2022

Mr. Rahul Thakur a/w. Mr. Sanket Thakur, Ms. Purva Pol, Ms. Nikita Patil, Ms. Vidhi Nayar, Mr. Chinmay Sapre and Mr. Pravin Poraji for applicant.

Mr. Hiten S. Venegaonkar, Mr. Aayush Kedia and Ms. Diksha Ramnani a/w. Ms. Rutuja Anil Ambekar, APP for respondent-Enforcement Directorate.

Mr. Saurabh Butala for intervenor in IA/92/24.

CORAM : MANISH PITALE, J.
DATE : 01st AUGUST, 2024

P.C. :

. Heard learned counsel for the applicant and the learned counsel appearing for the respondent-Enforcement Directorate (ED). On 26.07.2024, this Court passed the following order:

> “. Heard learned counsel for the applicant and the learned standing counsel for the Enforcement Directorate.
>
> 2. Having perused the entire material on record and upon specifically perusing the statements of the applicant recorded prior to his arrest and also statement of other individuals recorded by the Enforcement Directorate, this Court finds that the stringent twin test contemplated under Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA) is not satisfied by the applicant. This Court is unable to reach a conclusion that there are reasonable grounds to believe that the applicant is not guilty of offences under the PMLA.

> 3. At this stage, the learned counsel for the applicant submits that since the applicant has remained behind bars from 15.06.2021 i.e. for about three years one month and a few days, which is just a few months short of having undergone half the maximum sentence under the PMLA, this Court may consider enlarging the applicant on bail. It is also submitted that although the amount allegedly misappropriated in the present case is about ₹ 560 crores, the value of the assets already attached by the Enforcement Directorate under the provisions of PMLA comes to ₹ 834 crores, which more than secures the allegedly misappropriated amount.
>
> 4. This Court put specific query to the learned counsel for the applicant as to whether there is any judgment/order of the Supreme Court or any other Court in the context of PMLA, wherein although the applicant has failed to make out a case on merits under Section 45 of the PMLA as also the fact that half of the maximum sentence is yet to be undergone, such an applicant/accused has been enlarged on bail.
>
> 5. The learned counsel for the applicant seeks short adjournment to do further research and make submissions in that regard.
>
> 6. List on 30.07.2024 at 02:30 p.m."

2. While reaching the conclusion that the applicant does not satisfy the stringent twin test contemplated under Section 45 of Prevention of Money Laundering Act, 2002 (PMLA), this Court perused the entire material on record. It was found that the applicant being the chairman of Karnala Co-operative Bank, could be said to be *prima facie* responsible for the huge misappropriation of funds in the present case. It is in this background that the learned counsel appearing for the applicant sought adjournment to address this Court on the entitlement of the applicant for being released on bail on the ground that he has remained behind bars since 15.06.2021 i.e. for a period of about 3 years 2 months.

3. It was submitted on behalf of the applicant that in about 4 months time, he would be entitled to move the Court under Section 436A of the Criminal Procedure Code, 1973 (Cr.P.C.), to seek bail on the ground of having undergone half of the maximum sentence that can be imposed upon the applicant under the provisions of the PMLA. It was submitted that in such circumstances, although this Court is of the opinion that the twin test contemplated under Section 45 of the PMLA, is not satisfied, only on the ground of the long incarceration, this Court may consider granting bail to the applicant.

4. Additionally, it is submitted that the applicant being a senior citizen, aged about 71 years, who is suffering from various ailments, is also a factor that this Court may consider, while disposing of the present bail application. Attention of this Court is invited to the specific grounds taken in the application to the effect that the applicant has undergone liver transplant, as he was suffering from liver cancer and in that backdrop, he is required to take heavy immuno suppressant medicines and he requires regular monitoring and medical supervision. It is further submitted that the applicant is suffering from hypertension, diabetes and coronary diseases. The health condition of the applicant is not seriously disputed, in the facts and circumstances of the present case.

5. The learned counsel for the applicant placed reliance on various judgments of this Court as well as the Supreme Court, but specifically highlighted the view adopted by the Supreme Court in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (judgment and order dated 03.07.2024 passed in Criminal Appeal No.2787 of 2024) and *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh* (judgment and order dated 18.07.2024 passed in Criminal Appeal

No.2790 of 2024). Reliance was also placed on judgment of this Court in the case of *Hari Sankaran vs. Serious Fraud Investigation Office, Mumbai and another* (judgment and order dated 07.03.2024 passed in Criminal Bail Application No.2937 of 2022).

6. Mr. Venegaonkar, learned counsel appearing for the ED submits that the judgments of the Supreme Court on which reliance is placed on behalf of the applicant, pertain to the unlawful activities under the Unlawful Activities (Prevention) Act, 1967 (UAPA), wherein the statutory rigors, while considering a bail application, are slightly diluted as compared to the stringent twin test under Section 45 of the PMLA. It is submitted that under the UAPA, while considering the question as to whether bail can be granted to the applicant, the Court has to reach a *prima facie* finding as regards the possibility of the accused being held not guilty, as opposed to the stringent requirement under Section 45 of the PMLA for the Court to reach a finding that there are reasonable grounds for holding that the applicant is not guilty of the alleged offences.

7. It is brought to the notice of this Court that in the judgment of this Court in the case of Hari Sankaran vs. Serious Fraud Investigation Office, Mumbai and another (*supra*), this Court, *inter alia*, took into consideration the fact that the applicant was suffering from multiple health ailments and that he had undergone numerous heart procedures for placing stents and that the applicant therein was diagnosed with 100% blockage in both arteries with more than 7 stents in the heart.

8. It is evident from the nature of submissions made on behalf of the applicant that relief is sought in the peculiar facts and circumstances of the present case on the ground of ill-health, peculiar health condition requiring

regular monitoring and the period of incarceration already undergone. The Supreme Court, in recent pronouncements, has reiterated the position of law indicated in the earlier judgment in the case of *Union of India vs. K. A. Najeeb* [**(2021) 3 SCC 713**], to the effect that the Constitutional Courts can certainly consider enlarging the accused undertrials on bail, in the backdrop of the right of speedy trial guaranteed under Article 21 of the Constitution of India.

9. In the present case, the applicant has undergone incarceration for about 3 years 2 months since he was arrested on 15.06.2021. As on today, the application for discharge filed by the applicant, is pending and it is yet to be decided. This Court is informed that the application for discharge was argued on behalf of the applicant one and a half year ago before the Special Court, order was reserved, but the same could not be pronounced and thereafter, the learned Judge was transferred. This indicates that the charge is yet to be framed and the possibility of the trial commencing in the foreseeable future, appears to be dim, further indicating that the completion of trial is a long way away.

10. Although the applicant has not undergone half of the maximum sentence to qualify him to apply for relief under Section 436A of the Cr.P.C., in the facts and circumstances of the present case, it could be said that the applicant is on the cusp of completing the same, so as to get qualified to invoke the said provision of law.

11. Additionally, it is found that the applicant is a senior citizen aged about 71 years. He has undergone liver transplant, requiring him to take heavy immuno suppressant medicines. He is required to undergo constant medical supervision and observation. He also suffers from hypertension,

diabetes and coronary diseases.

12. In such a situation, this Court finds that the approach adopted by this Court in the case of Hari Sankaran vs. Serious Fraud Investigation Office, Mumbai and another (*supra*), can be followed. In the said case also, the applicant suffered from multiple health ailments and more than 7 stents had been placed in the heart of the applicant therein. In that backdrop and considering the period of incarceration therein, it was observed in paragraph No.31 of the said judgment that *dehors* merits and demerits as well as the statutory embargo, power can be exercised by this Court as a Constitutional Court.

13. It appears that even if the contention raised on behalf of the ED about distinction between the requirement of statutory embargo under UAPA on the one hand and PMLA on the other hand, is to be accepted, the power of this Court under Article 21 of the Constitution of India is unfeterred, to release the applicant on bail where the possibility of trial being completed in reasonable time, is extremely remote and the applicant undertrial is found to be suffering from health ailments. These factors indicate that even if the applicant is yet to complete the time period of incarceration that would qualify him for invoking Section 436A of Cr.P.C., particularly when the applicant falls short only about 4 months, this Court can exercise discretion in favour of the applicant.

14. In view of the above, the application is allowed in the following terms:

(i) The applicant shall be released on bail in connection with FIR No.78 of 2020 registered at Panvel Police Station, arising from E.C.I.R. No.ECIR/MBZO-II/15/2020 registered with Enforcement Directorate, Mumbai Zonal Office-II, on furnishing PR Bond of ₹ 50,000 and one or two sureties in the like amount to the satisfaction of the trial Court;

(ii) upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change;

(iii) the applicant shall report on first Monday of every month between 10:00 a.m. and 12:00 noon before the office of the Enforcement Directorate, Mumbai Zonal Office-II, during the pendency of the trial;

(iv) the applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;

(v) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

15. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

16. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. The application is disposed of.

18. In view of the bail application being allowed, the intervention application also stands disposed of.

(MANISH PITALE, J)

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2024.08.01 15:13:30 +0530

Priya Kambli