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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4140 OF 2023

Appasaheb Ramchandra Deshmukh .....Applicant

Vs.

Directorate of Enforcement and anr .....Respondents

WITH
INTERIM APPLICATION NO. 860 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 4140 OF 2023

Arun Dadaso Gore ….Applicant

<u>IN THE MATTER BETWEEN</u>

Appasaheb Ramchandra Deshmukh .....Applicant

Vs.

Directorate of Enforcement and anr .....Respondents

Mr. Sudeep Pasbola, Senior Advocate a/w Mr. Sandeep Karnik, a/w Mr. Vishwajeet Nimbalkar, Mr. Atharv B. Mr. Yash Naik i/b Mr. Vaibhav Gaikwad for the applicant
Mr. Shreeram Shirsat a/w Mr. Shekhar V. Mane for respondent ED
Mr. A. A. Kumbhakoni, Senior Advocate i/b Mr. Siddharth Karpe, Mr. V. V. Mohite, Mr. Manoj Badgujar for the intervener.
Ms. S. G. Talhar, APP for the respondent-State

CORAM : GAURI GODSE, J.

DATE : 10th DECEMBER 2024.

ORDER:

1. This application is filed by accused no. 6 for releasing him on bail in connection with ECIR/MBZO-II/31/2021. The bail application filed by the applicant before the Special Court under The Prevention of Money Laundering Act, 2002 ('PMLA') was rejected on 9th November 2023. The applicant was arrested on 16th June 2022 and has undergone incarceration for around two and a half years. The applicant is not an accused in the predicate offence. The predicate offence has resulted in the acquittal of the accused in the predicate offence, in view of the order passed before the Lok Adalat to compound the offences. However, the order passed by the Lok Adalat is stayed by this Court in a writ petition filed by the State Government. The petition is still pending. Hence, the hearing on the charge in the PMLA case has still not taken place. In view of these facts, the question to be decided by this Court is whether the applicant would be entitled to be released on bail on the ground of long incarceration.

2. The allegation in the predicate offence is regarding accepting huge amounts in cash by the educational institution from the students to secure admission to medical college. A parent of one of the students who was not given admission even after making payments has filed

the complaint. The allegation against the applicant is that at the relevant time, from September 2014 to November 2016, the applicant was working as a treasurer of the institution. It is alleged that the board of directors of the institution, i.e. Shri Chhatrapati Shivaji Education Society, had collected cash amounts from more than 350 students and cheated them to the tune of Rs. 68.68 Crores. It is alleged that the cash amount collected from the students, Rs. 2.98 Crores, is deposited in the bank accounts of the applicant and his firm. It is further alleged that the applicant was not able to produce any material to justify his and his firm’s income; hence, the cash amounts deposited in the applicant’s and his firm’s accounts are proceeds of crime.

3. Learned senior counsel appearing for the applicant submits that in view of sub-section (1) of Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’), the applicant is entitled to be released on bail as he has already undergone detention for a period of more than 1/3rd of the maximum punishment. This argument regarding release on bail under sub-section (1) of Section 479 of BNSS is opposed by learned counsel for respondent no. 1 on the ground that there are more than one offences pending against the applicant; hence, in view of sub-section (2) of Section 479, the applicant would

not be entitled to be released under sub-section (1) of Section 479 of BNSS. To support his submissions, learned counsel for respondent no. 1 has filed an additional affidavit dated 9th December 2024. The additional affidavit is taken on record. Respondent no. 1 has annexed copies of complaints where the applicant is arraigned as an accused as an authorised signatory on behalf of an educational institution. Learned counsel for respondent no. 1 submits that though the applicant is arraigned as an accused as an authorised representative of an institution, the applicant will be responsible in his individual capacity for the alleged offences. He submits that in one of the cases filed under The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (‘MPID Act’), the applicant is arraigned as an accused in his individual capacity. Learned counsel for respondent no. 1 submits that considering the allegations in the complaints, the applicant would be held guilty in his individual capacity in the said cases. He, therefore, submits that the applicant is not entitled to seek any benefit under sub-section (1) of Section 479 of BNSS.

4. Learned senior counsel for the applicant submits that in none of the cases the applicant is arraigned as an accused in his individual

capacity. According to him, there are no personal allegations against the applicant. Hence, the pendency of the criminal cases relied upon by respondent no. 1 in the additional affidavit cannot be a ground to refuse benefit under sub-section (1) of Section 479 of BNSS.

5. The learned senior counsel for the intervener submits that in view of sub-section (3) of Section 479, proceedings have already been initiated by the Superintendent of Jail. Therefore, he submits that to decide whether the applicant would be entitled to benefit under sub-section (1) of Section 479, the factual aspects must be verified. He, thus, submits that this Court is not required to deal with the issue of whether the applicant would be entitled to the benefit under sub-section (1) of Section 479 of BNSS.

6. To support his submissions, learned counsel for respondent no. 1 relied upon an order passed by the Karnataka High Court in the case of ***Mr. K. Ramakrishna Vs. The Assistant Director, Directorate of Enforcement, Bengaluru***[1], rejecting the bail application. Learned counsel for respondent no. 1 submits that benefit under sub-section (1) of Section 479 was refused to the applicant in the said case on the ground of pending criminal cases against the applicant. He submits that inspite of long incarceration, the Karnataka High Court refused the

1 **Criminal Petition No. 9930/2024 dated 23/11/2024**

bail on the ground of the gravity of the offence. He, therefore, submits that the applicant would not be entitled to seek benefit under sub-section (1) of Section 479 of BNSS.

7. Learned senior counsel for the applicant relies upon the order passed by the Delhi High Court in the case of ***Imran @ Sonu Vs. State of NCT of Delhi and anr***[2]. He submits that though two FIRs were pending against the applicant, the Delhi High Court granted benefit to the accused under sub-section (1) of Section 479 of BNSS. Learned senior counsel, therefore, submits that considering the view taken by the Delhi High Court, the present applicant would be entitled to be released on bail by giving benefit under sub-section (1) of Section 479 of BNSS.

8. I have perused the additional affidavit filed on behalf of respondent no.1. Perused the orders passed by the Karnataka High Court and the Delhi High Court. In the order passed by the Karnataka High Court, the benefit under sub-section (1) of Section 479 was refused on the ground of pendency of more than one offence against the accused. So far as the Delhi High Court's case is concerned, though there is more than one offence shown pending against the accused, the applicant was released on bail. Though the Delhi High

2 **Bail Appln. 2243/2024 and Crl. M.A. 19046/2024**

Court has referred to Section 479 of BNSS, prolonged incarceration is taken into consideration for the grant of bail, as is reflected in paragraph 8 of the order. The pendency of the cases against the accused is referred to in the order. However, no proposition is laid down regarding the grant of benefit under sub-section (1) of Section 479 of BNSS. A perusal of the reasons in the said order indicates that provisions of Section 479 are referred to as beneficial legislation. It is held that the object of jail is to secure the appearance of the accused during trial and is neither punitive nor preventive. It is also held that the deprivation of liberty is considered a punishment. Thus, no proposition has been laid down on the applicability of sub-section (1) of Section 479 of BNSS.

9. To seek benefit under sub-section (1) of Section 479, the only argument raised on behalf of the applicant is on the ground that the applicant is not arraigned as an accused in his individual capacity, but he is arraigned as an office bearer of the institution. Even if the applicant is arraigned as an accused as an office bearer of the institutions, there is no dispute that multiple cases are pending against the applicant, either at the stage of inquiry or trial. Hence, in view of sub-section (2) of Section 479 of BNSS, it is not necessary to further

elaborate on the applicability of sub-section (1) of Section 479 of BNSS. In view of sub-section (2) of Section 479, the applicant cannot be held entitled to benefit under sub-section (1) of Section 479 of BNSS.

10. Learned senior counsel for the applicant submits that the applicant had appeared before respondent no. 1, and his statements were recorded before he was taken into custody. He submits that the material relied upon against the applicant is based on his statements, which nowhere indicates that the applicant had any time received any cash amount as alleged against him. He submits that the material relied upon against the applicant is in reference to the applicant's personal accounts and his firm’s accounts. He submits that there is no substance in the allegation made against the applicant that the amounts deposited in his personal accounts or in his firm's accounts are proceeds of crime. He submits that all the necessary documents are already submitted to show that all amounts deposited in his accounts and his firm’s accounts are accounted for.

11. Learned senior counsel for the applicant further submits that the applicant was called upon by issuing summons on a complaint filed by the intervener. He submits that the intervener had offered to make the

payment towards the penalty imposed on the institution, and he made the payments towards the penalty and took over the management. Learned senior counsel further submits that after the management was taken over by the intervener, a false complaint was filed before respondent no. 1, and the applicant and his entire family were roped in, which is politically motivated. Learned senior counsel, thus, submits that there is no material against the applicant to support the allegations made against him that proceeds of crime have been deposited in his account or his firm's account.

12. Learned senior counsel further submits that respondent no. 1 relied upon the statements of other accused to support the allegations that cash amounts were accepted from the other accused; however, they were never taken into custody. He submits that the Special Court has already released three of the other accused on bail. He further submits that the applicant is not an accused in the predicate offence. According to the learned senior counsel for the applicant, accused nos. 2, 3 and 4, who were also alleged to be beneficiaries of the proceeds of the crime, have already been released on bail. He submits that no predicate offence exists in view of the order of compounding of offence passed before Lok Adalat. He submits that the petition filed by

the State Government challenging the order is still pending and has not proceeded further. He submits that if the writ petition is dismissed, there would be no predicate offence, which is *sine qua non* in the PMLA trial. Learned senior counsel for the applicant, therefore, submits that till the scheduled offence is not tried, the PMLA trial will not proceed and will not be concluded.

13. In view of the aforesaid facts, the learned senior counsel for the applicant relied upon the legal principles settled by the Hon'ble Apex Court in the case of ***V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement***[3]. Learned senior counsel for the applicant relied upon paragraphs 14, 21 and 25 of the decision. He also relied upon the decision of the Hon'ble Apex Court in the case of ***Prem Prakash Vs. Union of India through the Directorate of Enforcement***[4] and in the case of ***Manish Sisodia Vs. Directorate of Enforcement***[5]. Learned senior counsel further relied upon the decision of this Court in the case of ***Sachin Balasaheb Sawant Vs. Union of India and Another***[6]. He submits that in all these cases, the accused was released on bail on the ground of long incarceration. He submits that considering the legal

3 **2024 SCC OnLine SC 2626**
4 **2024 SCC OnLine SC 2270**
5 **2024 SCC OnLine SC 1920**
6 **2024 SCC OnLine Bom 3229**

principles settled in the aforesaid decisions, the applicant is entitled to be released on bail also on the ground of long incarceration.

14. Learned counsel for respondent no. 1 submitted that the decision in the case of ***V. Senthil Balaji*** and other decisions would not apply to the facts of this case. He submits that in view of the gravity of the offence, the applicant would not be entitled to be released on bail, only on the ground of long incarceration. He submits that long incarceration cannot be treated as a yardstick by ignoring the merits and gravity of the offence. To support his submissions, he relied upon the decision of this Court in the case of ***Vinod Chaturvedi Vs. Directorate of Enforcement through the Assistant Director, Zonal Office-I, and anr***[7]. He referred to paragraph 16 of the decision of ***Vinod Chaturvedi***. He submits that in spite of long incarceration, this Court refused bail to the accused by considering the gravity of the offence.

15. I have gone through the decisions relied upon by the parties. The decision in the case of ***Vinod Chaturvedi*** would not have any binding effect, in view of the settled legal principles in the Hon'ble Apex Court's decision in the case of ***V. Senthil Balaji*****,** which was not referred to in the case of ***Vinod Chaturvedi*****,** as it was heard before the decision of the Hon'ble Apex Court in the case of ***V. Senthil Balaji***. The decision in

7 **Bail Application No. 2926 of 2022**

the case of ***V. Senthil Balaji*** is consistently followed in various other cases. Learned senior counsel for the applicant has tendered a copy of the order passed by the Hon'ble Apex Court in the case of ***Ved Prakash Yadav Vs. Enforcement Director***[8]. He is right in submitting that the legal principles settled by the Hon'ble Apex Court in the case of ***V. Senthil Balaji*** have been consistently followed. The legal principles settled in the latest decision of the Hon'ble Apex Court in the case of ***V. Senthil Balaji*** squarely apply to the facts of the present case. Hence, it is not necessary to further elaborate on the other decisions relied upon by the learned counsel for the applicant.

16. I have considered the submissions. In view of the compounding of the predicate offence in the Lok Adalat, there has been no further progress on the matter as the case is not pending. Though the order passed before the Lok Adalat of compounding offence is stayed by this Court, the petition is still pending. Hence, till the writ petition is not decided and till the scheduled offence is not tried, the trial in PMLA proceedings will not be concluded. Hence, in the facts of this case, the legal principles settled by the Hon'ble Apex Court in the case of ***V. Senthil Balaji*** would squarely apply to this case. The relevant paragraphs 21 and 25 in the decision of ***V. Senthil Balaji*** read as

8 **Special Leave to Appeal (Crl.) No. 14175/2024**

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 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".*

> *"25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such*

statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time".

17. As recorded herein above, the applicant has been incarcerated for 29 months for the offence punishable under the PMLA. In view of the status of the predicate offence, the PMLA trial is not likely to begin in the near future. Hence, in view of the aforesaid legal principles, the applicant is entitled to be enlarged on bail on the ground of long incarceration, without the trial even likely to begin.

18. Hence, the bail application is allowed, and the applicant shall be enlarged on bail pending the trial in the case of PMLA Special Case No. 734 of 2022, pending on the file of learned Special Judge, Mumbai, under the PMLA arising out of ECIR/MBZO-II/31/2021 dated 20th October 2021 under Sections 3 and 4 of the PMLA on the following terms and conditions:

O R D E R

I. The applicant be enlarged on bail in connection with PMLA Special Case No. 734 of 2022 pending on the file of learned Special Judge, Mumbai, under the PMLA Act arising out of ECIR/MBZO-II/31/2021 dated 20th October 2021 under Sections 3 and 4 of the PMLA, on furnishing, P.R. bond in the sum of Rs. 3,00,000/- (Rupees Three Lakhs Only) with one or two sureties in the like amount.

II. The applicant shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses and victims of the scheduled offences in any manner. If it is found that the applicant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the applicant.

III. The applicant shall attend the office of Deputy Director, the Directorate of Enforcement, Mumbai Zone-II, on every alternate Monday of every month between 11.00 a.m. to 2.00 p.m. and report to the investigating officer.

IV. Before the applicant is enlarged on bail, he shall surrender his passport to the Special Court under PMLA, Mumbai. If he does not hold a valid passport, he shall file an affidavit to that effect.

V. The applicant shall regularly and punctually remain present before the Special Court, Mumbai and shall cooperate with the Court for early disposal of the case.

VI. If the applicant seeks adjournment on non-existing or frivolous grounds or creates hurdles in the early disposal of the case, the bail granted to him shall be liable to be cancelled.

VII. The applicant shall be enlarged on provisional cash bail for an amount of Rs. 3,00,000/- for a period of four weeks, subject to the compliance of the aforesaid conditions, except condition no. 1.

19. The application is allowed in the aforesaid terms.

20. I have heard the learned senior counsel for the Intervenor. In view of the disposal of the bail application, the intervention application is disposed of.

21. All the concerned shall act on the authenticated copy of this order.

[GAURI GODSE, J.]