IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.45377 of 2024
Reserved on: 06.11.2024
Pronounced on: 21.11.2024

Anil Nagar **...Petitioner**

Versus

Directorate of Enforcement through Assistant Director **…Respondent**

CORAM: **HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present: Mr. Vikram Chaudhri, Sr. Advocate with
Mr. Sajal Bansal, Advocate,
Ms. Hargun Sandhu, Advocate and
Ms. Nandini Gupta, Advocate
for the petitioner(s).

Mr. Satya Pal Jain, Additional Solicitor General of India with
Ms. Promila Nain, Senior panel counsel
for the respondent-ED.

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ANOOP CHITKARA, J.

Prosecution Complaint	Titled as "Directorate of Enforcement Vs. Anil Nagar & Ors" bearing COMA No. 37 of 2023 dated 29.09.2023 in ECIR/CDZO-II/15/2021 dated 22.12.2021) under Section 3 punishable under section 4 of Prevention of Money Laundering Act, 2002,

Arising out of,

FIR No.	**Dated**	**Police Station**	**Sections**
004	17.11.2021	State Vigilance Bureau (SVB) , Panchkula	7A of Prevention of Corruption Act, 1988

1. The petitioner incarcerated in the complaint captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], read with Sections 44, 45 and 65 of PMLA seeking regular bail.

2. Per paragraph 41 of the bail application and the custody certificate, the accused has history of case(s) marked above.

3. The facts and allegations are being taken from the reply filed by the ED, which reads as follows:

> *"33. That based on the money laundering investigation carried out under PMLA, 2002 by the Directorate of Enforcement, it was revealed that Anil*

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Nagar, the then Deputy Secretary, HPSC along with Ashwani Kumar @ Ashwani Sharma connived with Naveen, Pawan Gupta & other middlemen for taking bribe for getting the candidates fraudulently qualifying in Haryana Civil Services (Executive Branch) & Other Allied Services Examination 2021 & Dental Surgeon (Class II) Examination 2021 conducted by the HPSC. Hence the Authorized Officer, the Deputy Director, on the basis of the materials placed before him, had reasonable belief that the movable properties detailed below with total value of Rs. 3,29,97,000/- (Rupees Three Crore Twenty Nine Lakh Ninety Seven Thousand Only) were proceeds of crime in terms of section 2(1) (u) of the PMLA, 2002, generated by accused persons through criminal activities criminal activities related to scheduled offences and attached the same vide Provisional Attachment Order (hereinafter referred to as PAO) No. 05/2022 dated 30.03.2022 issued u/s 5(1) of the PMLA, 2002.

34. That in terms of section 5(5) of the PMLA, 2002, an Original Complaint (hereinafter referred to as OC) was required to file within 30 days of issuing the PAO before the Ld. Adjudicating Authority, PMLA, New Delhi, with prayer to confirm the said PAO u/s 8(3) of the PMLA, 2002. As the properties was derived and acquired from and out of proceeds of crime, as defined u/s 2(1) (u) of the PMLA, 2002, and were projected as untainted properties and thus involved in the offence of money laundering, an Original Complaint was filed on 25.04.2022 u/s 5(5) of the PMLA, 2002 within stipulated time with prayer to confirm the PAO No. 05/2022 dated 30.03.2022 in terms of section 8(3) of the PMLA, 2002. The Ld. Adjudicating Authority, PMLA allotted the OC No. 1701/2022 to the said Original Complaint."

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

"5. That, in the instant case, following summons were issued u/s 50 of the PMLA, 2002 to Anil Nagar, the Petitioner, herein by the Directorate:-

S. No	**Date of summons**	**Date of appearance**	**Compliance**
1.	02.03.2022	02.03.2022	His statement was recorded u/s 50 of the PMLA, 2002 in the Temporary office at Central Jail, Ambala after getting permission from the Competent Court.
2.	28.02.2023	28.03.2023	He appeared and his statement recorded on 28.03.2023. His statement could not be completed, so he was directed

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			to appear on 29.03.2023. He sought an adjournment on 29.03.2023.
3.	01.05.2023	12.05.2023	Due to some exigency the date was postponed and reschedule to 25.05.2023. Again, due to some exigency his statement could not be recorded.
4.	31.07.2023	03.08.2023	Neither he appeared nor any communication was received. Further a mail dated 07.08.2023 was received from his email id seeking 4-5 days time.
5.	04.08.2023	05.08.2023	
6.	07.08.2023	09.08.2023	Neither he appeared nor any communication was received. However, he filed Anticipatory Bail Application in the Special Court, PMLA at Panchkula
7.	21.08.2023	23.08.2023	Neither he appeared nor any communication was received.
8.	04.09.2023	06.09.2023	After dismissing the Anticipatory Bail Application by the Ld. Special Court, PMLA, Panchkula Court. One more summons was issued. But he neither appeared nor any communication was received.

That, as it was evident from above details that Anil Nagar deliberately, intentionally and knowingly avoided his appearance before the investigating officer in compliance to summons issued under section 50(2) & (3), which under law are termed as judicial proceedings in terms of Section 193 & 228 of IPC, 1860; an application with prayer for issuance of the Non Bailable Warrant (NBW) was filed, during the course of investigation, before the Ld. Special Court, PMLA, Panchkula on 18.09.2023. The Hon'ble Special Court, after considering the facts and circumstances of the case, issued the NBW against Anil Nagar on 18.09.2023.

As he was not residing at the available address with this Directorate, on the basis of report submitted by this Directorate, the Ld. Special Court, PMLA, Panchkula issued Fresh Warrant of Arrest against Anil Nagar, the petitioner herein on 03.10.2023 & 17.10.2023 with direction to arrest the accused, the petitioner herein and produce him on before the Ld. Special Court, PMLA on or before 17.10.2023 & 10.11.2023 respectively.

That, as it appeared that the accused Anil Nagar s/o late Jogi Ram went underground to escape from the eyes of Law, this directorate filed an application with prayer to start the process to declare the accused Anil Nagar s/o Late Jogi Ram, petitioner herein a Proclaimed Offender, that, on the basis of application filed by this Directorate, the Ld. Special Court, PMLA, Panchkula issued the Proclamation requiring the appearance of a person accused i.e Anil Nagar S/o Jogi Ram to appear at District and Session Court, Panchkula before Special Judge, under PMLA to answer the said complaint on the day of 22.12.2023. That Anil Nagar, the petitioner herein surrendered before the Ld. Special Court, PMLA, Panchkula on 22.12.2023 and the Ld. Special Court, PMLA, Panchkula sent him to judicial custody. Since then he is in judicial custody.

<u>THE ROLE OF ANIL NAGAR: -</u>

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37. Anil Nagar was instrumental in taking bribe in connivance with Ashwani Kumar @ Ashwani Sharma & other middlemen for getting the candidates of HCS & Dental Surgeon Examination qualified fraudulently conducted by the HPSC. Thus, he was involved in the fraudulent activity of demanding and accepting bribe money from various job aspirants through Ashwani Sharma & other middlemen for getting them qualified fraudulently in the examination conducted by the HPSC.

On the basis of investigation conducted so far, it is evident that he received total cash Rs. 3.29 Crore Approx from candidates through Ashwani Kumar @ Ashwani Sharma for getting them qualified fraudulently in the written examination for Dental Surgeon Examination and HCS- pre- examination respectively.

Hence, it is evident that he is actually involved in the processes/activities connected with the proceeds of crime including its generation, concealment, possession, acquisition, hence being involved in offence of money- laundering as defined u/s 3 & punishable u/s 4 of the PMLA, 2002."

7. An analysis of the above points out of sufficient primafacie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. Per paragraph 56 (DD) of the bail petition, the petitioner has been in custody since 22.12.2023. Per the custody certificate dated 05.11.2024, the petitioner's total custody in this complaint is 10 months and 14 days.

8. In Rabi Prakash v. The State of Odisha, Hon'ble Supreme Court of India, in SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023, while granting bail in a case under NDPS Act, held, "The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act." Since S. 45 of PMLA is a replica of S. 37 of NDPS Act, the same reasoning can be extended to the cases under the PMLA Act.

9. In Bachhu Yadav v. Directorate of Enforcement Government of India represented by its Assistant Director (PMLA) and Ors., decided on 06.09.2023, MANU/SC/0982/2023, Hon'ble Supreme Court holds,

> [7]. In that background, keeping in view the allegation against the Petitioner is of possessing the amount of Rs. 30 lakh in his bank account, apart from the fact that the very allegation is that the said amount was deposited on 24.01.2022 which is prior to the period of illegal activity alleged, for the present there is an explanation as put forth by the Petitioner during the course of investigation in answer to the specific question on being confronted with the account details in Jharkhand Gramin Bank, Bhagiamari Branch. The explanation is that the amount was

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> deposited by him in respect of the transaction for purchase of house with land in Asansol for Rs. 26 lakhs. It is further stated that the sum of Rs. 26,00,024/- was transferred through NEFT to one Munmun Maji and it is stated that the said amount was the sale consideration for the property. To enable transfer of the same, it had been deposited in the bank account. At the point of hearing this petition, it was stated across the bar that the sale has also been registered. Be that as it may, these are aspects which, in any event, would be looked at during the course of the trial.
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> [8]. Further, though the learned Additional Solicitor General has contended that the bail application filed by the main Accused Pankaj Mishra has been dismissed by this Court on 26.04.2023 in Special Leave Petition (Criminal) No. 4682 of 2023, it is seen that the application filed has in fact been withdrawn with liberty to file an application for interim bail on medical ground and also to file afresh bail application after six months. Be that as it may, in the instant facts, the nature of the allegation in the present proceedings has been taken note. In that circumstance, it is seen that the Petitioner was arrested on 05.08.2022 and he has spent a little over one year of incarceration. The chargesheet is filed and the Trial Court having framed the charges, no doubt has started the trial and it is stated across the bar that five witnesses have been examined but it is also stated that in all 42 witnesses are cited to be examined. In that circumstance, taking into consideration all aspects of the matter and also making it subject to the condition that the Petitioner shall diligently participate in the trial without interfering in the course of justice and also complying with the other appropriate conditions to be imposed by the trial court, the prayer is accepted. The chargesheet is filed and the Trial Court having framed the charges, no doubt has started the trial and it is stated across the bar that five witnesses have been examined but it is also stated that in all 42 witnesses are cited to be examined. In that circumstance, taking into consideration all aspects of the matter and also making it subject to the condition that the Petitioner shall diligently participate in the trial without interfering in the course of justice and also complying with the other appropriate conditions to be imposed by the trial court, the prayer is accepted.
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> [9] . Hence, we direct that the Petitioner be enlarged on bail subject to appropriate conditions being imposed by the trial court and the Petitioner diligently adhering to such conditions, as also not being required in any other case.

10. In Gautam Kundu Vs. Manoj Kumar, Govt. of India, MANU/SC/1453/2015, Hon'ble Supreme Court holds,

> [33]. …We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick

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or infirm. Therefore, there is no doubt that the conditions laid down Under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable Under Section 4 of the PMLA, even when the application for bail is considered Under Section 439 of the Code of Criminal Procedure.

[35]. We cannot brush aside the fact that the Appellant floated as many as 27 companies to allure the investors to invest in their different companies on a promise of high returns and funds were collected from the public at large which were subsequently laundered in associated companies of Rose Valley Group and were used for purchasing moveable and immoveable properties.

[36]. We do not intend to further state the other facts excepting the fact that admittedly the complaint was filed against the Appellant on the allegation of committing offence punishable Under Section 4 of the PMLA. The contention made on behalf of the Appellant that no offence Under Section 24 of the SEBI Act is made out against the Appellant, which is a scheduled offence under the PMLA, needs to be considered from the material collected during the investigation and further to be considered by the competent court of law. We do not intend to express ourselves at this stage with regard to the same as it may cause prejudice the case of the parties in other proceedings. We are sure that it is not expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidences. We have noted that in *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation* (2013) 7 SCC 439, this Court has observed that the economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of country. In Union of India v. Hassan Ali Khan (2011) 10 SCC 235, this Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held in the said paragraph that allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons Under Section 24 of the PML Act, 2002. The same proposition of law is reiterated and followed by the Orissa High Court in the unreported decision of Smt. Janata Jha v. Assistant Director, Directorate of Enforcement (CRLMC No. 114 of 2011 decided on December 16, 2013). Therefore, taking into account all these propositions of law, we feel that the application for bail of the Appellant should be seen at this stage while the Appellant is involved in the economic offence, in general, and for the offence punishable Under Section 4 of the PMLA, in particular.

11. In Sheikh Javed Iqbal v. State of Uttar Pradesh, decided on 18 Jul 2024, MANU/SC/0716/2024, Hon’ble Supreme Court holds,

[21]. It is true that the Appellant is facing charges Under Section 489B Indian Penal Code

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> and Under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence Under Section 489C Indian Penal Code is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.
>
> [22]. It is trite law that an Accused is entitled to a speedy trial. This Court in a catena of judgments has held that an Accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the Accused-under trial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.
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> [32]. This Court has, time and again, emphasized that right to life and personal liberty enshrined Under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an Accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the Accused undertrial Under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the Rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) [Union of India v. K.A. Najeeb, 2021:INSC:50] being rendered by a three Judge Bench is binding on a Bench of two Judges like us.
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> [33]. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the Appellant cannot be justified. We are, therefore, inclined to grant bail to the Appellant.

12. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

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14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

15. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. This order is subject to the petitioner's complying with the following terms.

17. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

18. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

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Whether speaking/reasoned: Yes
Whether reportable: No.

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