



CRM-M-47578-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47578-2024 (O&M)
Date of decision: 4th November, 2024

Jaswant Singh ...Petitioner

Versus

Directorate of Enforcement ...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vikram Chaudhri, Senior Advocate assisted by
Ms. Hargun Sandhu, Advocate
for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India (**through V.C.**)
assisted by Ms. Meghna Malik, Central Govt. Counsel
for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed, under Section 439 of the Code of Criminal Procedure, 1973, (for short, “Code”) read with Section 483 of the Bharatiya Nagarik Surakasha Sanhita, 2023 for seeking bail pending trial in case bearing COMA/01/2024 arising out of ECIR/JLZO/10/2022 dated 23.05.2022 under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short “PMLA”).

2. BRIEF FACTS:-

2.1. Tara Corporation Limited (for short “TCL”), incorporated on 16.11.2010 (later re-named as Malaudh Agro Limited) was engaged in trading of cattle feed and petitioner had been associated as a Director from its inception.

**CRM-M-47578-2024**

It is alleged that on 24.09.2011, TCL availed credit facility from Bank of India, Model Town Branch, Ludhiana to the tune of Rs.35 crore and subsequently it was enhanced to Rs.46 crore.

2.2 It is also alleged that petitioner stood as a guarantor for the aforesaid credit facility. Initially, TCL paid instalments well in time; but later on, committed default resulting into accumulation of about Rs.41 crore as outstanding dues. On 31.03.2014, the account of TCL was declared as NPA (Non-Performing Asset).

2.3 In order to show its *bona fide*, TCL made attempt to settle the outstanding dues through “One Time Settlement” (OTS) with the Bank on 09.01.2017, but it could not materialize due to certain reasons. Later on, the account of TCL was declared as a “*Wilful Defaulter*”, which was challenged by way of CWP-25192-2018 and the same was allowed by then Division Bench vide order dated 24.02.2020 (P-1). As a result of the above, order of the bank, declaring TCL as “*Wilful Defaulter*” was quashed and set aside.

2.4 Thereafter, the Bank submitted a written complaint to the Central Bureau of Investigation (CBI) and on the basis of which, FIR No.RCCHG2022A0012 dated 28.03.2022 under Sections 406, 409, 420, 421 & 120-B of Indian Penal Code, 1860 (IPC) and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, (as amended vide Amendment Act, 2018) (PC Act) was registered against the petitioner as well as other co-accused.

2.5 Contents of above FIR were scrutinized by the Enforcement Directorate (E.D) and it was found that offences under Sections 120-B & 420 of I.P.C and Section 13(1)(d) read with Section 13(2) of PC Act are falling within the definition of “*Scheduled Offence*” under Section 2 (y) of PMLA and covered under



CRM-M-47578-2024

Part-A of the Schedule thereof. Resultantly, ECIR/JLZO/10/2022 was recorded against the petitioner along with other co-accused on 23.05.2022. Petitioner was arrested by the E.D on 06.11.2023. Thereafter, he was remanded to judicial custody on 20.11.2023 and which has been extended from time to time. Hence present petition.

3. CONTENTIONS

ON BEHALF OF PETITIONER: -

3.1 Learned Senior Counsel contends that on 16.11.2010, petitioner was inducted as a Director in the TCL, merely being an elder member of the family, but he had no role in the day-to-day functioning of the company; rather all the business decisions were taken by other directors; thus the role of petitioner was only to the extent that he stood as a guarantor for the loan availed by the company.

3.2 Also contends that petitioner resigned from the directorship of the company on 05.02.2016 and out of outstanding dues of Rs.41 crore, an amount of Rs.35.50 crore has already been recovered and attached by the E.D.

3.3 Further contends that after the arrest of petitioner, CBI filed charge-sheet for the “Scheduled offence” on 18.01.2024 and the offences under PC Act were deleted by the CBI and the matter has been remitted to the Court of Id. Magistrate, but cognizance is yet to be taken in the CBI case.

3.4 Again contends that in the complaint bearing no. COMA-1/2024 filed by the E.D before Id. Special Judge, there are as many as 20 PWs and documents are running into 2276 pages. Also contends that there is no cogent material against the petitioner; rather he has been implicated merely on the ground that he failed to



CRM-M-47578-2024

appear before the E.D officials and which is nothing, but blatant abuse of the process of law.

3.5 Further contends that petitioner is not keeping good health as he is suffering from various ailments, including serious heart problem and even petitioner was taken to different hospitals by the E.D itself for medical examination; thus, petitioner being a sick person deserves the concession of bail on medical ground also.

3.6 Yet again contends that petitioner has suffered a long incarceration for a period of about one year and the principle of bail being rule and its rejection, an exception, would squarely apply to the facts of present case.

3.7 Still further contends that petitioner was arrested by the E.D on 06.11.2023; thereafter, he was sent to judicial custody and for the last about one year, petitioner is being incarcerated without there being any progress of the trial. Also contends that petitioner is an elected member of Legislative Assembly from Amargarh Constituency, Malerkotla in Punjab and as such, being a responsible person, not likely to flee from justice.

3.8 Again contended that petitioner fully cooperated with the investigating agency and replied to all the summons sent by E.D, from time to time. On 04.08.2023, petitioner received first summons requiring his personal appearance for 08.08.2023, but he could not appear due to his prior commitments to visit Canada and the same was communicated to the E.D officials through letter dated 04.08.2023 showing his *bona fide* for joining the investigation after his return from Canada on 25.09.2023.



CRM-M-47578-2024

3.9 Again contends that E.D officials while ignoring petitioner's response regarding his return from Canada on 25.09.2023, issued summons on 10.08.2023 and 30.08.2023, seeking his personal appearance on 16.08.2023 and 08.09.2023, respectively, knowing well that he was out of country. Further contends that both the summons were sent by the E.D just to create an evidence that petitioner is not cooperating in the matter.

3.10 Also contends that petitioner has never evaded the process of law, intentionally and he has duly replied the summons received from E.D, through e-mail, from time to time.

3.11 Lastly contended that petitioner was served summons for the fourth time on 06.10.2023, directing him to appear personally on 09.10.2023 before the E.D officials, but he could not appear due to his health problem and which was duly communicated to the E.D along with the medical certificate.

3.12 In support of the contentions, learned Senior counsel has relied upon the following judicial precedents:

- i. Ramkripal Meena Versus Directorate of Enforcement, SLP (Crl.) 3205 of 2024 decided on 30.07.2024;*
- ii. Manish Sisodia Versus Directorate of Enforcement, 2024 SCC Online 1920 decided on 09.08.2024;*
- iii. Bhagwan Bhagat Versus Directorate of Enforcement, Criminal Appeal No. 3392 of 2024 decided on 12.08.2024;*
- iv. Kalvakuntla Kavitha Versus Directorate of Enforcement, Criminal Appeal No.3523 of 2024 arising out of SLP (Crl.) No.10778 of 2024 decided on 27.08.2024;*
- v. Prem Prakash Versus Union of India through the Directorate of Enforcement (Crl. Appeal No.3572 of 2024 arising out of SLP(Crl.) 5416 of 2024 decided on 28.08.2024;*



CRM-M-47578-2024

- vi. *Vijay Nair Versus Directorate of Enforcement, SLP(Crl.) Diary No. 22137 of 2024 decided on 02.09.2024;*
- vii. *Balwinder Singh Versus State of Punjab and another, SLP (Crl.) No. 8523 of 2024 decided on 09.09.2024);*
- viii. *Arvind Kejriwal Versus Central Bureau of Investigation, Crl. Appeal No.3816/2024 arising out of SLP(Crl.) No. 11023 of 2024 decided on 13.09.2024;*
- ix. *V. Senthil Balaji Versus The Deputy Director, Directorate of Enforcement, (Criminal Appeal No. 4011 of 2024 decided on 26.09.2024); and*
- x. *Sunil Dammani Versus Directorate of Enforcement; (Criminal Appeal No.4108 of 2024 decided on 03.10.2024).*

ON BEHALF OF RESPONDENT: -

4.1 Learned Addl. Solicitor General of India appearing for the respondent, submits that loan facility to the tune of Rs.46 crore was fraudulently availed by TCL while showing bogus share capital and fictitious turnovers. Further submits that above amount was never used for the intended purposes; instead, diverted to the accounts of sister concerns and other shell companies to misuse the loan amount.

4.2 Again submits that petitioner is the main kingpin of entire bank fraud as he stood guarantor for the credit facility availed by TCL and caused loss to the public exchequer to the tune of Rs. 41 Crore.

4.3 Vehemently submits that out of total loan availed by TCL, an amount of Rs. 3.12 crore was credited into the account of petitioner, which would be termed as “*proceeds of crime*” and the same is yet to be recovered from him.

4.4 Further submits that after issuance of first summons on 04.08.2023, petitioner, intentionally flew to Canada on 05.08.2023 and came back to India via



CRM-M-47578-2024

Nepal in order to conceal his journey as well as to frustrate the ongoing investigation; thus it is apparently clear that petitioner was having *mala fide* intention from the very beginning.

4.5 Again submits that petitioner was quite healthy on the date of his arrest and this fact is quite evident from the fact that he was attending a public gathering in his office at relevant point of time. Also submits that out of total proceeds of crime of Rs.41 crore, a sum of Rs.35.50 crore (approx.) has been attached, but the remaining amount is yet to be recovered.

4.6 Further submits that investigation is still going on and co-accused Balwant Singh (brother of petitioner) was remanded to E.D custody on 05.10.2024 and with effect from 10.10.2024, he has been remanded to judicial custody. Also submits that co-accused (Kulwant Singh and Tejinder Singh) have not joined the investigation and are delaying the matter unnecessarily.

4.7 Still further submits that arrest order; grounds of arrest dated 06.11.2023 and remand order dated 07.11.2023 were challenged by the petitioner in CWP-26089-2023; but the same was dismissed vide order dated 24.05.2024 and he remained unsuccessful upto Hon'ble the Supreme Court.

4.8 In support of the contentions, learned Additional Solicitor General has relied upon following judicial precedents:-

- i. Vijay Madanlal Choudhary and others Versus Union of India and others, 2022 SCC Online SC 929;***
- ii. E.D. Versus Aditya Tripathi, Criminal Appeal No.1401/2023;***
- iii. Radha Mohan Lakhota Versus Directorate of Enforcement 2010 SCC Online Bom. 1116;***
- iv. J. Sekar Versus Union of India and others 2018 SCC Online Del 6523;***



CRM-M-47578-2024

- v. *P. Rajendran Versus Directorate of Enforcement (Criminal Original Petition No.19880 of 2022) Madras;*
- vi. *Gautam Kundu Versus Manoj Kumar, Assistant Director (Criminal Appeal No.1706 of 2015 arising out of SLP (Crl.) No. 6701 of 2015);*
- vii. *E.D. Versus Shri Debabrata Versus Halder (CRM(SB) 93 of 2022;*
- viii. *Y.S. Jaganmohan Reddy Versus CBI (Criminal Appeal No.730 of 2013 arising out of SLP (Crl.) No.3404 of 2013; and*
- ix. *Anirudh Kamal Shukla Versus Union of India through Assistant Director, (2022 SCC OnLine All 176).*

5. Heard learned counsel for the parties and perused the paper-book.

6. In **Manish Sisodia Versus Directorate of Enforcement, 2024 SCC Online 1920 decided on 09.08.2024**, Hon'ble the Supreme Court held that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PMLA and reference in this regard can be made to para 28 of the above judgment which reads as under: -

"28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, the cases of murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of



CRM-M-47578-2024

depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PMLA Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

7. Again, Hon’ble the Supreme Court in ***Prem Prakash Versus Union of India through the Directorate of Enforcement (Criminal Appeal No. 3572 of 2024 arising out of SLP (Crl.) No.5416 of 2024 decided on 28.08.2024)*** held that where the accused has been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigors of Section 45 of PMLA can be suitably relaxed to afford conditional liberty and relevant observations in this regard are extracted as under:-

“11....All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, "bail is the rule and jail is the exception" is only a paraphrasing of Article 21 of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier,



CRM-M-47578-2024

all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

12. Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Directorate of Enforcement (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and Javed Gulam Nabi Shaikh Vs. State of Maharashtra 2024 SCC OnLine SC 1693, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia (II) reiterated the holding in Javed Gulam Nabi Sheikh (supra), that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial.

.....

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict.”

8. Yet again, Hon’ble the Supreme Court in ***Vijay Nair Versus Directorate of Enforcement, in SLP (Crl.) Diary No.22137/2024 decided on 02.09.2024*** held that bail is the rule and jail is an exception. For reference, relevant part of the judgment reads as under:-

“12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in



CRM-M-47578-2024

the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed is only 7 years for the offence of money laundering.”

9. Still further, 3-Judge Bench of Hon’ble the Supreme Court held that concession of bail can be granted to sick or infirm person even under PMLA and reference in this regard can be made to ***Aman Sadhuram Mulchandani Versus Directorate of Enforcement and another SLA(Crl.) No. 11376 of 2024 decided on 14.10.2024.***

10. In view of the above settled legal proposition, there is no hesitation to observe that if trial is not likely to be concluded in near future, the bail can be granted to an accused under PMLA, if the circumstances so warrant.

11. In the present case, petitioner is in custody since 06.11.2023. Complaint was filed on 04.01.2024. As per the stand taken by the E.D itself, investigation *qua* other co-accused is still going on; thus, not even remotely, there would be any chance that trial is likely to be concluded in the near future.

12. Apart that, the material collected by the E.D uptill now, is voluminous running into 2276 pages and there are 20 prosecution witnesses cited while filing the complaint before learned Special Judge. It has also come on record that out of



CRM-M-47578-2024

total dues of Rs.41 crore, an amount of Rs.35.50 crore (approx.) has already been recovered and attached by the E.D.

13. Again, it is evident that TCL tried to make an attempt for settlement of the outstanding liability through 'OTS', but the same could not materialize for certain reasons. However, there is nothing on record to indicate that 'OTS' could not fructify due to any lapse on the part of petitioner.

14. Even as per the stand taken by the E.D itself, petitioner ceased to be a Director of TCL w.e.f. 21.12.2015 i.e. much prior to the lodging of present FIR on 23.05.2022; thus, in such a scenario, the complicity of petitioner would be a debatable question during trial.

15. Also noteworthy that initially, petitioner was taken to Civil Lines Hospital, Jalandhar by the E.D from where he was referred to Government Medical College (GMC), Amritsar and later on, he was taken to PGIMER, Chandigarh and remained in the Critical Care Unit (CCU) under the care of Cardiology, Head of the Department. Thereafter petitioner was admitted in Government Rajendra Hospital, Patiala; thus there would be no difficulty to say that petitioner is not keeping good health and he can be safely termed as a "sick person" within the ambit of Section 45 of PMLA.

16. Although, learned counsel for E.D raised an objection that in case petitioner is granted bail, he may hamper the ongoing investigation and may even threaten the prosecution witnesses; but it is based merely on surmises and there is no material to substantiate the same; hence the objection to that effect is hereby rejected.



CRM-M-47578-2024

17. Although, learned counsel for E.D cited various judicial precedents while opposing the bail, but the same are not helpful for the following reasons: -

- i. ***Vijay Madanlal Choudhary; Aditya Tripathi; Radha Mohan Lakhotia; J. Sekar; P. Rajendran; Gautam Kundu; Shri Debabrata Halder's cases (supra)*** have been relied upon to substantiate the contention that offence of money laundering is independent and twin conditions mandated under Section 45 of PMLA have to be complied with. There is no quarrel with the legal proposition laid down by Hon'ble the Supreme Court in the above judgments: however, in view of the elaborate discussion made here-in-above and the distinguishable factual position, these precedents would not be helpful to the respondent.
- ii. In ***Y.S. Jaganmohan Reddy (ibid)***, it was held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Again, there is no dispute about the law laid down by Hon'ble the Supreme Court, but as discussed above, in the present case, further incarceration of petitioner is not warranted, hence, this judgment is distinguishable on facts.
- iii. In ***Anirudh Kamal Sukhla's case (supra)***, the Allahabad High Court held that for money-launderers "jail is the rule and bail is an exception". With great respect, in view of the mandate of Article 141 of the Constitution, this Court is bound to follow



CRM-M-47578-2024

the law laid down by Honble the Supreme Court in *Vijay Nair's case (supra)*, which says that bail is the rule and jail is an exception in such like cases.

18. In view of the above, this Court is fully convinced that further incarceration of the petitioner would not serve any purpose; consequently, the petition is allowed.

19. Petitioner is ordered to be released on bail upon furnishing bail-bonds and surety bonds subject to the satisfaction of learned Special Court/Judge on duty, if not required in any other case.

20. Petitioner shall fully co-operate with the learned Special Court without seeking any unnecessary adjournments.

21. At the same time, in the interest of justice, it is clarified that if there is any misuse of concession on the part of petitioner, E.D would be at liberty to move an appropriate application for recalling of this order.

22. Also clarified that wilful non-appearance of the petitioner before learned Special Court during trial shall be construed as the misuse of concession on his part.

23. The above observations be not construed as an expression of opinion on merits of the complaint pending before learned Special Court; rather confined only to decide the present bail application.

Pending criminal misc. application(s), if any, shall also stand disposed off.

4th November, 2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No