



2024:DHC:7700



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 11th September, 2024

Pronounced on: 4th October, 2024

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BAIL APPLN. 1663/2024, CRL.M.A. 19416/2024

SEHEGAL HOSSAIN

.....Petitioner

S/o Late Amjad Hossain

R/o Flat No. 2-C, Sondhara

Apartment Bypass Road, Bolpur,

West Bengal.

Through: Mr. M.R. Shamshad, Sr. Advocate
with Mr. Samrat Nigam and Mr.
Arijit Sarkar, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

.....Respondents

Through Assistant Director

Headquarters Office,

B-Block, Parvartan Bhavan

Dr. A.P.J. Kalam Road

New Delhi-110011

Through: Mr. Anupam S Sharma, SPP with Mr.
Prakash Airan, Ms. Harpreet Kalsi,
Mr. Abhishek Batra, Mr. Ripudaman
Sharma, Mr. Vashist Rao and Mr.
SyamantakModgill, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

BAIL APPLN. 1663/2024



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1. The Applicant has filed this Bail Application under section 439 of Criminal Procedure Code 1973 (hereinafter Cr.P.C.) read with section 45 of the Prevention of Money Laundering Act, 2002 (hereinafter PMLA) for grant of Regular Bail in Complaint Case No. 13/2022 filed in CIR/KLZO/41/2020 dated 25.09.2020 registered by the Directorate of Enforcement (hereinafter ED).

2. **Briefly stated** the CBI, ACB, Kolkata registered a Preliminary Enquiry (PE) vide No. PE0102018A0004 dated 06.04.2018 against Sh. Satish Kumar, Md. Enamul Haque, Sh. Bhuvan Bhaskar s/o Sh. Satish Kumar and Others. The PE revealed that cattle smuggling was happening from India to Bangladesh by paying illegal gratification to BSF personnel deputed on the Border during 19.12.2015 to 22.04.2017. The CBI alleged that Md. Enamul Haque used to pay Rs. 2000/- per cattle to BSF officials and Rs. 500 to Customs Officials aside from the 10% of the Auction price from successful bidders like Enamul Haque.

3. The CBI, after completion of PE, registered a RC No. RC0102020A0019, dated 21.09.2020 for offences under section 120B IPC and Sections 7, 11, & 12 of the Prevention of Corruption Act, 1988 (PC Act). The Chargesheet under Section 173 of Cr.P.C., 1973 was filed before the Special Judge, CBI, Asansol, Paschim Bardhaman, West Bengal on 06.02.2021 against the accused persons, namely, Satish Kumar (the Applicant), Md. Enamula Haque, Md. Anarul SK, Md. Golam Mustafa, Badal Krishna Sanyal, Rasheda Bibi and Tanya Sanyal (2nd wife of Satish Kumar). The Supplementary Chargesheet was filed by the CBI before the Special Judge on 24.02.2021 against the accused persons, namely, Manoj Sana and Vinay Mishra.



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4. The Applicant was arrested by on 09.06.2022 by CBI, Kolkata on the basis of FIR No. RC0102020A0019 dated 21.09.2020 under Sections 7/11/12 of Prevention of Corruption Act, 1988 (hereinafter PC Act, 1988) and is in custody since that day, other than being released on Interim Bail on medical grounds for complete period of 6 weeks between 22.02.2024 and 03.04.2024.
5. On the basis of the information in the CBI case, ECIR/KLZO/41/2020 dated 25.09.2020 was registered by the Kolkata Zone, Enforcement Directorate, Government of India under Section 3 of the PMLA, 2002 punishable under Section 4 of PMLA, 2002 which was subsequently transferred to Delhi with the approval of the then Director, ED.
6. The ED thus, on the basis of investigation in the said ECIR, filed the Complaint Case No. CT13/2022 on 16.04.2022; First supplementary Complaint dated 18.06.2022. The Applicant was named in the Second Supplementary Complaint and was arrested by the ED on 07.10.2022. The Second supplementary Complaint dated 05.12.2022 in the Court. Consequently, his custody was shifted from Kolkata to New Delhi.
7. Finally, third supplementary Complaint dated 04.05.2023, was filed by ED.
8. It is submitted that the Applicant was a constable working in the Police Department and was deputed to be a PSO (Personal Security Officer) to one Mr. Anubrata Mondal. The allegations levelled by the ED and CBI are false, baseless, and without any prima facie evidence. In the absence of any prima facie evidence of commission and involvement in the scheduled offence, the offences under the PMLA are unsustainable and the custody of the Applicant is in violation of Article 21 of the Constitution.



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9. The Applicant seeks Bail on the ground of being in custody in the PMLA case since 07.10.2022, i.e. for approximately 19 months. The Supplementary Complaint against the Applicant stands filed on 05.12.2022 and as such investigation is complete and therefore, further custody of the Applicant would serve no purpose.

10. The trial has not yet begun, and the matter is at the stage of scrutiny of documents. The Respondent has filed an Application seeking permission to further record the statement of the Applicant which would have led to further prolonging the trial in the present case, though the request for further interrogation of the Applicant has already been rejected. Further, the investigation in the present case seems to be an ongoing process as the first Chargesheet was filed on 19.04.2022 and since then, it has been 2 years that the investigation is not yet complete.

11. The Applicant has been granted bail in the CBI case by this Hon'ble Court *vide* order dated 24.04.2024 in Bail Appl. No. 463 of 2024.

12. There are about 85 witnesses to be examined in the present case under PMLA and it is going to take time. Also, since the investigation has not been completed yet, it is possible that there will be more witnesses added to the list and that would further prolong the trial and custody of the Applicant. There is a voluminous record which needs to be examined and thousands of pages in Bengali which need to be translated, which would consume much time. The investigation is ongoing and the trial has not yet commenced and is at the stage of supplying un-relied documents.

13. Further, the properties of the Applicant have been wrongly attached by the ED despite the Applicant and his family members having shown the Income Tax Returns, including documents to show that the monies used to



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buy the said properties were from valid sources. The case pertaining to attached properties is ongoing in as Appeal No. 6453-6456 of 2023 before the Appellate Tribunal, PMLA.

14. The Applicant seeks bail for the foregoing reasons and is ready to undergo any stringent conditions that are imposed upon him.

15. The Respondent has filed a **Reply by way of Status Report wherein it is** stated that the supplementary Chargesheet dated 24.02.2021 and 06.08.2022 was filed by CBI wherein Vikas Mishra, Sk. Abdul Latif and Sehegal Hossain, i.e. the Applicant, herein were arraigned as accused.

16. It is submitted that during investigation it was revealed that both Sheikh Abdul Latif and Md. Enamul Hoque, partners in the business of M/s Naj Marbles, were in contact with Sehegal Hossain, a Police Constable of West Bengal Police and a personal bodyguard of Sh. Anubrata Mondal who used to collect illegal gratification from Sk. Abdul Latif and Md. Enamul Hoque for providing protection to the illegal business of cross-border cattle smuggling.

17. The investigation further revealed that cash amount to the tune of Rs.12,80,98,237/- was deposited in the 18 bank accounts related to Anubrata Mondal, Sukanya Mondal and their family members and Firms, and this cash was nothing but part of proceeds of crime.

18. Further investigations have also revealed that the Applicant and the Md. Enamul Haque and Sk. Abdul Latif were in regular contact. The factum of Applicant and co-accused, Anubrata Mondal, being involved in cattle smuggling syndicate was corroborated by the Statement u/s 50 of PMLA of Sk. Abdul Rahim @ Khokan dated 28.04.2023, wherein he had stated that the co-accused persons namely Enamul Haque and Abdul Latif used to get



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help from local police and administration through the Applicant and Anubrata Mondal for collecting cattle from various markets without any obstacles for which he used to get commission from Md. Enamul Haque and Abdul Latif for such procurement.

19. Further, *Sh. Rajib Bhattacharjee* in his Statement under Section 50 of PMLA dated 03.11.2022 to 09.11.2022 has stated that the Applicant was close to the co-accused Anubrata Mondal in 2011 both personally and politically, after TMC came to power. The Applicant was responsible for collection and accounting of commission money from Zila Parishad on behalf of Anubrata Mondal along with cash collection and cash maintenance. He also stated that he used to call the Applicant to get in touch with Anubrata Mondal, who never took calls from anybody.

20. Similarly, *Sh. Malay Pit* in his Section 50 PMLA Statement dated 08.11.2022 to 10.11.2022, who was in touch with the Applicant about construction of his Medical College, stated that he knew the Applicant since 2019 and that if he wanted to visit Mr. Anubrata Mondal then he had to connect with the Applicant.

21. The above-mentioned factum of the Applicant managing the affairs of co-accused Anubrata Mondal, such as overseeing monetary transaction, cash collection, and laundering of the PoC, is further corroborated by the Section 50 PMLA Statement of *Sh. Biswajyoti Banerjee* and *Sh. Sanjib Majumdar*, who stated that all dealings between Anubrata Mondal and others were done through the Applicant.

22. It is submitted that the Applicant has amassed disproportionate assets of Rs. 5.47 Crores in the name of Self and family members, generated from the predicate offence of cattle smuggling. Also, the CBI Chargesheet



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disclosed that the total income of Mrs. Latifa Khatun (mother of the Applicant), Mrs. Somaiya Khandokar (wife of the Applicant) and the Applicant himself for 2015-2022 was Rs. 1,04,10, 216/- whereas the total value of assets and expenditures during the same period was Rs. 5,47,90,867/- which is disproportionate to their known sources of income.

23. It is claimed that the degree of complicity and involvement of the Applicant in the cattle smuggling syndicate is such that the *co-accused Sk. Abdul Latif* in his Statement under Section 50 PMLA has stated that he had met Sehegal Hossain at M/s Naj Marbles a couple of times and that he had sold a property to some unknown person through Madhab Kaibarta which was immediately bought by Mrs. Latifa Khatun at a price much lower than the market rate of the property.

24. Likewise, Mrs. Somaiya Khandokar, in her Section 50 statement has stated that she was not aware of the cash deposits as the same were not deposited by her but by Late Sh. Madhab Kaibrata. Similarly, Mrs. Latifa Khatun, in her Section 50 Statement, has stated that the cash deposit of Rs. 33.21 lacs was made by Sh. Madhab Kaibrata. For the cash deposit of Rs. 1.55 Crores, she stated that she had no knowledge of the transactions which were made by Sh. Madhab Kaibrata on the instructions of her son.

25. The Applicant in his statement gave false explanation for the deposits which he could not corroborate. After formally arresting the Applicant on 07.10.2022, an Application under section 267 of Cr.P.C. was preferred by the Respondent, which was allowed, and the Ld. Special Judge directed the Production of the Applicant. The Applicant approached this Hon'ble Court and the Supreme Court *vide* W.P. (Crl.) 2465/2022 and SLP (Criminal) 34074/2022, however, both were dismissed and the Order of Ld. Special



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Judge was upheld. Thereafter, in the Supplementary Prosecution Complaint dated 05.12.2022 the Applicant was arraigned as an accused.

26. It is explained that during further investigations, it was revealed that the Applicant received documents and blank cheques from various benamidars on the instructions of Anubrata Mondal for whom the Bank accounts in their names were opened by him. Beside this, payments were made by the Applicant for the purchase of properties in the name of benamidars for Anubrata Mondal and himself.

27. It is asserted that the Applicant has not cooperated with the investigation and has made attempts to mislead the Investigating Agency by not providing true facts and denying involvement in the cattle smuggling syndicate and financial transactions despite cogent evidence to this effect. In fact, he has denied knowing Md. Enamul Haque which is false, as the factum of the Applicant being in regular contact with Enamul Haque is corroborated by the statement of Sk. Abdul Latif and CDR records received from CBI, Kochi. It is claimed that such non-cooperative behaviour of the Applicant raises serious apprehension that material evidence may be tampered with, besides he influencing the witnesses.

28. Moreover, the syndicate involving the Applicant was such that those who protested against the illegal activities being carried out, were either managed or falsely implicated in NDPS cases by the Applicant.

29. Merely because the Applicant has been granted bail in the scheduled offence by this Hon'ble Court, would not inure to the benefit of the Applicant as is the settled position of law, having recently been re-affirmed by the Hon'ble Supreme Court in Directorate of Enforcement vs. Aditya Tripathi, CrI. Appeal No. 1401/2023, that mere factum of grant of bail in



predicate offence would not automatically entitle an accused for grant of bail under PMLA. In any case, the Applicant is required to satisfy the mandatory conditions under Section 45 PMLA in addition to the conditions for grant of bail under Section 439 Cr.P.C. as held in a catena of judgments.

30. It is submitted by the Respondent that the Applicant's argument that the investigation qua him is complete and that the trial is going to take time entitling him to Bail, has been dealt with and rejected by the Supreme Court in Tarun Kumar vs. Assistant Director, Directorate of Enforcement, Criminal Appeal No. 9431/2023.

31. It is finally submitted that the Bail Application is devoid of merits and is liable to be dismissed.

32. *The detailed arguments have been addressed by the learned Senior Advocate on behalf of the Applicant and Written Submissions have also filed on behalf of the Applicant.*

33. The learned counsel for the Applicant has placed reliance on Manish Sisodia vs Directorate of Enforcement, 2023 INSC 956, and Arvind Kejriwal vs Directorate of Enforcement, 2024 INSC 512 highlighting the intersectionality of prolonged period of incarceration vis-à-vis rights pertaining to life and liberty of individual enshrined in the Constitution. Reliance has been placed on Ram Kripal Meena vs Directorate of Enforcement, SLP(Crl.) No. 3205 of 2024 dated 30.07.2024, to highlight the observations made qua long incarceration with no sign of conclusion of trial anytime soon. To buttress the same proposition, the learned counsel has placed further reliance on Manish Sisodia vs Directorate of Enforcement, 2024 INSC 595, Bhagwan Bhagat vs. Directorate of Enforcement, Criminal Appeal No. 3392 of 2024, Kalvakuntla Kavitha vs. Directorate of



Enforcement, 2024 INSC 632, and Prem Prakash vs Union of India through DoE, 2024 INSC 637.

34. ***Learned Special Counsel on behalf of the Respondent*** has also addressed the arguments which are essentially on the same lines as detailed in its Reply by way of Status Report.

35. The **learned counsel for the Respondent** has placed reliance on Gautam Kundu vs. Manoj Kumar, Assistant Director, Eastern Region, Directorate of Enforcement, AIR 2016 SC 106, Gautam Thapar vs. Directorate of Enforcement, in Bail Appln. 4185/2021, Satyendar Kumar Jain vs Directorate of Enforcement, in Bail Appln. 3590/2022, Benoy Babu vs Directorate of Enforcement, 2023 SCC OnLine Del 3771, Tarun Kumar vs. Assistant Director, Bail Appl. No. 152/2023, Anoop Bartaria vs. Directorate of Enforcement, AIR OnLine 2023 SC 469, Rohit Tandon vs. Enforcement Directorate, AIR 2017 SC 5309, Sajjan Kumar vs Directorate of Enforcement, MANU/DE/2155/2022, Bimal Kumar Jain vs Directorate of Enforcement, in Bail Appln. 2438/2022, Deepak Talwar vs. Enforcement Directorate, AIR OnLine 2019 Del 1573, and Directorate of Enforcement vs Aditya Tripathi, Criminal Appeal No. 1401/2023.

36. **Submissions Heard.**

37. The guarantee of Personal liberty of every individual envisioned by Article 21 of the Constitution of India, which cannot be curtailed except by due process of law. The fundamental principle of “*bail is the rule and jail is exception*”, has been time and again emphasized by the Apex Court and other Courts and has been recently reiterated in the case of Vijay Nair vs. Directorate of Enforcement, SLP (Crl.) No. 22137 of 2024 dated



02.09.2024, as the foundational presumption of criminal law is that of “innocence until proven guilty”.

38. In Masroor v. State of Uttar Pradesh and Another, 2009 SCC OnLine SC 903, the Hon’ble Supreme Court observed that the courts must strike a balance between the valuable right of liberty of individual and the larger interest of society. The Hon’ble Supreme Court has time and again reiterated that the economic offences constitute a class apart and must be approached differently in regards to the bail, as has also been observed by the Hon’ble Supreme Court in the judgments State of Gujarat v. Mohanlal Jitamalji Porwal and Another, (1987) 2 SCC 364, Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439, Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466, and Tarun Kumar v. Assistant Director, Directorate of Enforcement, 2023 SCC OnLine SC 1486.

39. The Bail Application under Section 45 of PMLA is to be decided by referring to special nature of the offence of money laundering. In Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine SC 1674, the Hon’ble Supreme Court observed that Section 45(1) of PMLA shows that the accused is required to cross the threshold of the *twin conditions mentioned therein*: (i) public prosecutor shall be given an opportunity to oppose the application for release of the accused; and (ii) the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail at the time of seeking bail.

40. In Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India, Through Manoj Kumar, Assistant Director, AIR 2016 SC 106, the Supreme Court observed that the



twin conditions under Section 45 PMLA are mandatory and need to be complied with and the provision of Section 45 will have an overriding effect on the provisions of Cr.P.C. in case of conflict between them. Again, in Tarun Kumar (Supra) the Hon'ble Supreme Court observed that “*the Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and he is not likely to commit any offence while on bail.*”

41. In the recent decision of Manish Sisodia vs. Central Bureau of Investigation, 2023 SCC OnLine SC 139, the Hon'ble Supreme Court observed that right of liberty guaranteed under Article 21 of the Constitution of India is a sacrosanct right which needs to be accepted even in cases where stringent provisions are incorporated through special laws. It was held that prolonged incarceration before being pronounced guilty of an offence, should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that “bail is the rule and refusal is an exception”.

42. The same principles have been reiterated by the Apex Court while granting bail to the accused under PMLA, 2002 in Kalvakuntla Kavitha v. Directorate of Enforcement, 2024 INSC 632 and Vijay Nair v. Directorate of Enforcement, in SLP (Crl.) No. 22137/2024 vide order dated 02.09.2024.

43. In Prem Prakash v. Union of India, SLP (Crl.) No. 5416/2024 the Apex Court has held that the fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of PMLA, 2002 which has been reiterated by the Apex Court while granting bail under the PMLA 2002 in Vijay Nair (supra).



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44. Pertinently, Sh. Anubrata Mondal has been admitted to bail by the Hon'ble Supreme Court in the case of Anubrata Mondal @ Kesto vs. The Central Bureau of Investigation and Anr. decided *vide* SLP (Crl) No. 12769/2023 on 30.07.2024, essentially on the grounds of his long period of incarceration from 11.08.2022 and the case still being at the stage of Section 207 of Cr.P.C. 1973. Further, seeing the volume of pages in the Chargesheet and some of it being in Bengali and thus, require translation, were considered to be the contributing factors in the period of incarceration, and thus, co-accused Sh. Anubrata Mondal was admitted to bail.

45. Also, the co-accused Sh. Anubrata Mondal has been recently admitted to Bail by the Ld. Trial Court *vide* order dated 20.09.2024 in IA No. 74/2024 filed in CT Case No. 13/2022 titled Directorate of Enforcement vs. Mohd. Enamul Haque & Ors.

46. The allegations against the Applicant are essentially are in the nature of facilitating the offence of illegal cattle smuggling by providing authoritative support and consequent clout that he exercised on account of his being in the Police and being connected with an influential Political leader, the co-accused Mr. Anubrata Mondal. He helped in procuring stray cattle from various markets, collecting cash on behalf of co-accused, Mr. Anubrata Mondal, and laundering the PoC. The Applicant is an accused in the predicate offence as well, though admitted to bail in the said offence by this Court.

47. Though the investigations qua the Petitioner are complete and the Supplementary Complaint has been filed in the Court, but the trial has not been proceeding since last 2 years.



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48. Looking at his antecedents, he is not a flight risk, and he has deep roots in the Society, having been in the employment of the Govt. The evidence being essentially documentary, is not likely to be tampered or the witnesses influenced.

49. Applicant has been in judicial custody from 09.06.2022, in the scheduled offence, and from 07.10.2022, in the present case, i.e. for over two years. The documents involved in the present case are voluminous and the trial may take a long time to get concluded as was observed in Anubrata Mondal (Supra), while granting the Bail to the co-accused.

50. Considering the above-mentioned facts and in the light of the aforesaid discussion, the Applicant is admitted to bail on the following terms and conditions:-

- a. the Applicant is directed to furnish a personal bond in the sum of Rs. 5,00,000/- and one surety of the like amount to the satisfaction of the learned Trial Court;
- b. the Applicant shall appear before the Court as and when the matter is taken up for hearing;
- c. the Applicant shall provide his mobile number to the IO concerned, which shall be kept in working condition at all times and he shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;
- d. the Applicant shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- e. the Applicant shall not leave the country without prior permission of the learned Trial Court;



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- f. the Applicant shall not try to contact, threaten or influence any of the witnesses of this case; and
 - g. the Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
51. The Registry is directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.
52. Accordingly, the present Application, along with pending application(s) if any, is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2024