



\$~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3432/2019**

DIRECTORATE OF ENFORCEMENT

.....Petitioner

Through: Mr. Zoheb Hossain, Special counsel
with Mr. Vivek Gurnani, Mr. Kartik
Sabharwal, Mr. Pranjal Tripathi, Mr.
Kanishk Maurya, Mr. Kunal Kochar,
Advts.

versus

SUSHEN MOHAN GUPTA

.....Respondent

Through: Mr. Siddharth Aggarwal, Sr. Adv.
with Mr. Chandan Kumar, Mr. Faraz
Maqbool, Ms. Sowjhanya Sankaran,
Ms. Arshiya Ghose, Ms. Sana Juneja,
Ms. A. Sahitya, Mr. Ishaan Phukan,
Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

24.10.2024

%

1. The present petition has been filed under Section 439(2) r/w Section 482 Cr.P.C. seeking setting aside of the order dated 01.06.2019 passed by Ld. Special Judge (PMLA) granting bail to the respondent in relation to ECIR/DLZO/15/2014/AD(VM).
2. Mr. Zoheb Hossain, learned special counsel for Directorate of Enforcement has predominantly challenged the bail on the ground that the Ld. Special Judge in the impugned order dated 01.06.2019 has fallen into error by *inter alia* holding that the twin conditions of Section



45(1) of the PMLA shall not be applicable and considered the application for bail as Regular Bail under Section 439 Cr.P.C. Learned Special counsel submits that pursuant to **Nikesh Tarachand Shah v. UOI & Anr**, (2018) 11 SCC 1 the amendment was carried out by the parliament on 19.04.2018 wherein the twin conditions were revived. Learned special counsel submits that this position was reaffirmed by the Apex Court in **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.** 2022 SCC OnLine SC 929, learned special counsel submits that therefore the present order being in teeth of law cannot be allowed to be sustained. Learned special counsel besides this, has also invited the attention of the Court to the fact that the Ld. Special Judge granted the bail taking into account the ground of parity and the fact that the petitioner was not an accused in the scheduled offence. Learned special counsel submits that both of these grounds cannot be a ground for granting of bail.

3. Learned special counsel submits in **Pavana Dibbur v. Directorate of Enforcement** 2023 SCC OnLine SC 1586, it was *inter alia* held that it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as an accused in the scheduled offence. Learned special counsel in this regard has also relied upon **Vijay Madanlal Choudhary (Supra)**. Learned special counsel also submits that the ground of parity can also not be pressed in such like cases as held in **Tarun Kumar v. Assistant Director Directorate of Enforcement** 2023 SCC OnLine SC 1486.
4. Learned special counsel has further relied upon **Union of India v. Varinder Singh alias Raja and Another** (2018) 15 SCC 248, learned



special counsel submits that this SLP had arisen out of an order dated 05.08.2015 passed by Punjab and Haryana High Court. Learned special counsel submits that the Supreme Court in its order dated 21.07.2017 cancelled the bail after almost two years on the ground that the bail without complying with the requirements of Section 45 of the PMLA. Learned special counsel has further submitted that in other cases also in **Asst. Director, Enforcement Directorate v. Dr. V. C. Mohan** 2022 SCC OnLine SC 452 and **Directorate of Enforcement v. Aditya Tripathi** 2023 SCC OnLine SC 619 also bail was cancelled on the identical grounds.

5. Learned special counsel has further submitted that in **Puran v. Rambilas and Another** (2001) 6 SCC 338 the Supreme Court has *inter alia* held that the bail can be cancelled if the same has been granted ignoring material and evidence on record or if the order granting bail is perverse in the nature. Learned special counsel has also submitted that the respondent has also tempered with the evidence. Learned counsel submits that therefore the wrong order cannot be allowed to be sustained in the eyes of law.
6. Mr. Siddharth Aggarwal, learned senior counsel for the respondent, has vehemently opposed the application for cancellation of bail. Learned senior counsel submits that as on the date when the Ld. Special Judge has passed the order in the challenge, it was settled position that the twin conditions of Section 45 of the PMLA will not be operative. Learned senior counsel submitted that the judgment in **Nikesh Tarachand Shah (Supra)** was passed on 23.11.2017. It was submitted that though the legislature brought in the amendment on 19.04.2018 the



position was clarified only in July 2022 when the Apex Court in ***Vijay Madanlal Choudhary (Supra)*** settled the legal position that the twin conditions of Section 45 of the PMLA were always there in operation. Learned senior counsel has fairly submitted that in some of the cases, some High Courts have also taken divergent views.

7. Learned senior counsel submits that the jurisdiction of cancellation of bail is to be exercised in exceptional circumstances and in a sparing manner. Learned senior counsel submits that in the present case more than almost five years and four months have passed since the grant of the bail. It has been submitted that at no occasion the petitioner has misused the liberty granted to him. It has further been submitted that all applications for cancellation of bail of co-accused namely Gautam Khaitan, S.P.Tyagi, Ratul Puri and Sanjeev Tyagi have been dismissed. Learned senior counsel submits that the present respondent is fully cooperating with the agency. It has further been submitted that as of now besides the initial private complaint 11 supplementary complaints have been filed. It has further been submitted that there are 273 witnesses.
8. Learned senior counsel submitted that the respondent has been granted **08** open travel orders and at no point of time the bail has been misused.
9. In the Rejoinder, Mr Zoheb Hossain, learned special counsel, has submitted that though the CBI's applications for cancellation of bail of Gautam Khaitan, Ratul Puri and Rajiv Saxena have been declined, the present application is to be considered on its own merits and circumstances.
10. Both the learned counsels have clarified that the application on behalf



of the Directorate of Enforcement for the cancellation of bail of Ratul Puri has been dismissed, whereas the application for cancellation by the Directorate of Enforcement in respect of Gautam Khaitan and Rajiv Saxena are pending consideration before this Court in CRL.M.C. 2711/2021 and CRL.M.C.1478/2020. However, the applications for cancellation of bail by CBI in respect of accused S.P. Tyagi, Sanjeev Tyagi and Gautam Khaitan have been dismissed.

11. This Court is conscious of the fact that the jurisdiction of cancellation of bail can be exercised in exceptional circumstances and has to be cancelled only in rare cases.
12. The Court is also conscious of the settled legal position that if an order suffers from some illegality or perversity it has to be set aside. In the present case, the main contention is that whether as on the date, the Ld. Special Judge passed the order under challenge, the twin conditions of Section 45 of the PMLA were applicable or not.
13. In ***Assistant Director, Directorate of Enforcement v. Pankaj Trivedi (SLP CrI. No. 6128/2019)*** while dealing with the legality of the bail order in the Directorate of Enforcement of cases on the ground that the High Court wrongly released the respondents on bail without having regard to the gravity of the offence and without considering the restrictive provisions of Section 45 of PMLA *inter alia* held that as the respondents have been enlarged on bail four years back and they had already suffered about three years imprisonment about the predicate offence. No benefit would accrue to the investigating agency by taking them back in custody.
14. In **Parvinder Singh Khurana v. Directorate of Enforcement**, SLP



(Crl) No. 8007-8010/2024, it was *inter alia* held that the fundamental principle underlying this approach is the constitutional protection of personal liberty, enshrined in Article 21 of the Constitution. If a competent court has already found the accused entitled to bail, the subsequent court should be extremely reluctant to deprive the accused of their liberty unless there are compelling and specific grounds for cancellation as outlined in Section 439(2) of the Criminal Procedure Code. The judicial reasoning behind this approach recognizes that personal liberty is a sacrosanct right, and any interference with it must meet the highest standards of judicial scrutiny.

15. In the present case also, the impugned order was passed on 01.06.2019, though the agency has taken a plea that the respondent has tampered with the prosecution evidence, however, such allegations without any substance cannot be taken into account for the cancellation of bail. Dehors the legal position as agitated by Mr. Zoheb Hossain, learned special counsel for the petitioner and Mr. Siddharth Aggarwal, learned senior counsel for the respondent, the Court taking into account the facts that the bail was granted on 01.06.2019 by the Ld. Special Judge cannot be interfered with, particularly in view of the fact that this is a case which involves 60 accused persons and 273 witnesses. Thus, I consider that the agency would not accrue any benefit by getting the cancellation of bail. I consider that liberty is a paramount consideration before the Constitutional Court while deciding such applications for bail. The bail cannot be decided merely on academic grounds, and the Court has to see whether the continuance of the bail order would impact the investigation enquiry or trial of the case in hand.



16. It is a settled proposition of law that the original bail-granting court is deemed to have carefully considered the merits of the case before releasing the accused, unless shown otherwise. Therefore, any subsequent interference should be an exception rather than a rule, guided by the overarching principle of protecting individual liberty while simultaneously ensuring the interests of justice. This approach reflects the delicate balance between personal freedom and the broader objectives of criminal jurisprudence.
17. In view of the above discussions and facts and circumstances, the present petition stands dismissed. However, the question of law as being raised in this case regarding applicability of twin conditions is left open and this decision shall not be fallen as precedent.

DINESH KUMAR SHARMA, J

OCTOBER 24, 2024/AR/HT