IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69988 of 2024

Arising Out of PS. Case No.-14 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

==

Jitendra Kumar Singh Son of Mr. Rama Prasad Singh R/o Sripalpur, Ward No. 8, P.O. - Laheri, Thana Kochas, Rohtas, Bihar 821112

... ... Petitioner/s

Versus

The Union of India Through Asst. Director (Authorised Officer of the Central Govt. under the PMLA The Union of India Through Asst. Director (Authorised Officer of the Central Govt. under the Prevention of Money Laundering Act, 2002 1st floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Arshdeep Singh Khurana, Advocate
		Mr. Gyan Abhinav, Advocate
		Ms. Neeha Nagpal, Advocate
		Mr. Malak Bhatt, Advocate
		Mr. Vishvendra Tomar, Advocate
		Ms. Shreya Singh, Advocate
		Mr. Saket Gupta, Advocate
		Mr. Sulakshan S. Vedartham, Advocate
For the Opposite Party/s	:	Mr. Dr. K.N. Singh (A.S.G)
		Mr. Manoj Kumar Singh, Advocate
		Mr. Ankit Kumar Singh, Advocate
		Mr. Shivaditya Dhari Sinha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

5 12-02-2025 Learned Counsel Mr. Arshdeep Singh Khurana appearing on behalf of the petitioner through virtual mode assisted by Ms. Neeha Nagpal, Advocate, Mr. Malak Bhatt, Advocate, Mr. Vishvendra Tomar, Advocate and Learned Senior Counsel Dr. K.N. Singh (A.S.G.) appearing on behalf of Union of India assisted by Mr. Manoj Kumar Singh, Advocate & Mr. Ankit Kumar Singh, Advocate.

2. The petitioner seeks regular bail in connection with Special Trial (PMLA) Case No.02 of 2024 arising out of ECIR No.PTZO/14/2023 dated 15.03.2023 registered for alleged

commission of offences under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') which is pending before the Court of Special Judge (PMLA)-cum-District & Sessions Judge, Patna.

3. In continuation of his argument, Learned Counsel for the Enforcement Directorate has placed before this Court a judgment in case of ***Tarun Kumar Vs. The Assistant Director, Directorate of Enforcement,*** a reportable judgment in ***SLP (Crl.) No.9431 of 2023***. Counsel submits that the Hon'ble Supreme Court at the time of consideration of the case has categorically held in the said judgment that conditions laid down under section 45 of the PMLA is necessary. Without fulfilling the twin conditions, bail could not be granted and the petitioner need to be complied with. Counsel further submits that in case of a person charged with the offence of money laundering under Section 3 of the PMLA, proceeds of crime are involved in money laundering, such conditions enumerated under Section 45 of the PMLA will have to be complied with even in respect of an application for bail under section 439 of the Code of Criminal Procedure, 1973, in view of the over riding effect given to the PMLA over other law for the time being in force as inserted under Section 71 of the PMLA.

Counsel further submits that demand of parity as made by the Counsel for the petitioner is also not permissible due to the reason that in the said case of Tarun Kumar (supra), it is noted that parity is not the law. He also submits that while appliying the principles of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. He submits that in the present case, there is no question of parity applicable to the present petitioner. Counsel further submits that in case of Tarun Kumar (supra), Court has upon consideration of every aspect of the matter, rejected the bail application of the appellant. And in this aspect of the matter, Counsel submits that the petitioner does not deserves bail and his bail application be directed to be rejected.

4. In response thereof, Learned Counsel for the petitioner Mr. Arshdeep Singh Khurana appears through virtual mode submits that Counsel for the Enforcement Directorate has not placed before this Hon'ble Court about the correct position of law. He submits that in case of Tarun Kumar (supra) in SLP (Crl.) No.9431 of 2023, order has been passed on 20.11.2023, whereas, Hon'ble Delhi High has pleased to grant bail to the said accused Tarun Kumar on 20.11.2024 in B.A. No.2985 of 2024 considering all aspect of the matter. Particularly,

discussing the liberty granted under Article 21 of the Constitution of India with the curtailment of liberty in section 45 of the PMLA. Counsel submits that when the said accused person has been granted bail by the Hon'ble High Court on 20.11.2024 considering all those aspects which was earlier been discussed in the order dated 20.11.2023, the submissions of the Counsel for the Enforcement Directorate may not be accepted. He submits that before Hon'ble High Court that the right of liberty granted under Article 21 of the Constitution of India was the prime issue and in this regard, discussion of latest judgment as well as judgment of Hon'ble Supreme Court in case of ***Manish Sisodia Vs. Directorate of Enforcement*** reported in ***2024 SCC Online SC 1920***, judgment of ***Vijay Nair Vs. Directorate of Enforcement*** in ***SLP (Crl.) Diary No. 22137 of 2024***, judgment of ***Badshah Majid Malik Vs. Directorate of Enforcement & Ors.*** in ***SLP (Crl.) No.10846 of 2024*** have been fully discussed and particularly in paragraph no.18 of the judgment of Tarun Kumar (supra), Hon'ble Delhi High Court *vide* order dated 20.11.2024 has concluded that:-

> *"I am of the view that the liberty of a citizen is paramount and the same has also been held by the Hon'ble Supreme Court in Manish Sisodia (supra) and V.*

Senthil Balaji Vs. Enforcement Directorate reported in 2024 SCC Online 2626."

Counsel submits that in the said judgment, there are two aspects which has categorically been discussed by Hon'ble Delhi High Court particularly in paragraph nos.22 to 24 which are very much relevant and states as follows:-

> *"22. The judgment of* ***Siddharth Kumar (supra)*** *is distinguishable. The coordinate bench while dismissing the bail application of the other co-accused, namely, Mr. Siddharth Kumar has not adverted to the argument of primacy of Article 21 of the Constitution of India over the mandatory twin conditions of Section 45 PMLA.*
>
> *23. The Hon'ble Supreme Court time and again has held that the fundamental rights under Article 21 of the Constitution of India are paramount and cannot be subjugated to the statutory bar under Section 45 of the PMLA and the same needs to be appreciated in its true context and meaning.*
>
> *24. The emphasis of the Hon'ble Supreme Court in the aforesaid judgements is that even in PMLA offences, bail is to be considered by*

relaxing the rigors under Section 45 of PMLA, if an accused has undergone reasonable period of sentence and there is no likelihood of the trial concluding soon.”

5. Learned Counsel for the petitioner further submits that at the cost of repetition, he wants to place the case of the Enforcement Directorate against the present petitioner which they have mentioned in their counter affidavit in brief. According to the Enforcement Directorate, it has been accepted particularly in paragraph no.3(ix) that during investigation by the Enforcement Directorate, it has been revealed that the petitioner is a dummy Director in M/s MorMukut Marketing Pvt. Ltd. It has been accepted by the Enforcement Directorate that the said company is completely under control of Subhash Prasad Yadav. Counsel submits that it has also been accepted by the Enforcement Directorate that from the analysis of the documents recovered from the Pendrives seized from the premises of the petitioner, it has been revealed that it is Subhash Prasad Yadav who received cash of Rs.15.25 crores which is share of syndicate for the months of January 2021 to February 2021. Counsel further submits that the Enforcement Directorate has made analysis of those documents and reached on the conclusion that on the instruction of Subhash Prasad Yadav, his

employee i.e. petitioner prepared a PDF file which contains details of transferred money. Counsel states that it is the case of the Enforcement Directorate that petitioner is the employee of Subhash Prasad Yadav and he was assigned to look after the sand mining business of Arwal sand ghat upon the instruction of his master. Counsel further submits that again in paragraph no.3(xv), the same has been repeated by the Enforcement Directorate that everything has been done by the petitioner only on the instruction of Subhash Prasad Yadav. Counsel submits that the said 1.70 crores which was alleged to be recovered from the petitioner's possession is a factual matrix which petitioner is not denying. But, Counsel submits that there is no material on record produced by the Enforcement Directorate that the said money recovered from the possession of the petitioner is basically the proceeds of crime. Counsel further submits that the Enforcement Directorate only on the basis of presumption and assumption, reached on the conclusion that it is the proceeds of crime. In this regard, Counsel relied on the judgment of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.*** reported in ***2022 SCC Online SC 929*** particularly its paragraph nos.30, 31 and 33 which states as follows:-

> *"30. The other relevant definition is "proceeds of crime" in section 2(1) (u)*

of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and the Finance (No. 2) Act, 2019, took within its sweep any property (mentioned in section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence (mentioned in section 2(1)(y) read with Schedule to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a *result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision (i. e., section 2(1)(u)).*

31. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency *in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of section 2(1) (u) of the 2002 Act-so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax* *legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under section 3 of the Act.*

33. Tersely put, it is only such property which is derived or obtained directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering or an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed unless the same is registered with the jurisdictional police or pending enquiry by way of *complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular section 2(1)(u) read with section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."*

6. Learned Counsel for the petitioner further submits that at worst, the amount which has been received from the possession of the petitioner may be actionable for tax violation and will not be regarded as proceeds of crime unless the

concerned tax legislation prescribes such violation as offence. He put emphasis that the tax evasion is not prescribed in a scheduled offence under the PMLA. Counsel for the petitioner concludes his argument on the point of parity that as per the case of the Enforcement Directorate, the present petitioner has done all the things on the instruction of his master i.e. Subhash Prasad Yadav and he is only the employee. Here in the present case, Subhash Prasad Yadav with other all co-accused persons of the said complaint case have been granted bail considering two aspects of the matter, that the right which has been available to the accused persons under Article 21 of the Constitution of India is provided much weightage by the Hon'ble Supreme Court in comparison to the section 45 of the PMLA and as well as so far as the question of delay is concerned in the trial, because right to speedy trial is guaranteed under Article 21 of the Constitution of India also. He submits that it has already been discussed in the cases of other accused persons that there were in total 21 criminal cases pending and no progress has been taken place and trial has not been started in those cases, so far as the cases relating to scheduled offences are concerned. And there is no likelihood of commencement of trial in the PMLA case also. Counsel further submits that those points on which this Court has well discussed at the time of granting bail to other co-accused persons, also available to the present petitioner and he demands parity from this Court only on those points. Counsel submits that this Court at the time of consideration of bail to the other accused persons in case of (Baban Singh & Ors. Vs. Enforcement Directorate) *vide* order dated 29.11.2024 passed in Cr. Misc No.34015 of 2024 with analogous cases, counsel seeks bail to the present petitioner also on the same footing particularly, the discussions made in paragraph nos.7 to 10 which are as follows:-

> *"7. This Court also agrees with the argument advanced by learned Sr. Counsel for the Union of India that the provision of Section 45 of the PMLA creates a condition for the grant of bail to the accused of PMLA but the observations made by Hon'ble Supreme Court in the case of* ***Prem Prakash Vs. Union of India through the Directorate of Enforcement (in SLP (Crl.) No.5416 of 2024)*** *reported in* ***MANU/SC/0943 of 2024*** *whereby the Hon'ble Supreme Court has pleased to observe that where a situation has arisen that there is no likelihood of conclusion of trial within a short span, the rigors of Section 45 of*

the PMLA can be suitably relaxed to afford condition liberty and keeping persons behind 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. Relevant paragraphs 12, 13 and 14 whereof are reproduced as under :

> ***"12.*** *Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Enforcement Directorate (2024) 12 SCC 684 and Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) SCC Online 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 PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia (II) (supra) 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.

13. *In fact, Manish Sisodia [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920] reiterated the holding in Manish Sisodia v. CBI [Manish Sisodia v. CBI, (2024) 12 SCC 691 : 2023 SCC OnLine SC 1393] wherein it was held as under : (Manish Sisodia case [Manish Sisodia v. CBI, (2024) 12 SCC 691 : 2023 SCC OnLine SC 1393] , SCC paras 34-35)*

"34. 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, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven.

35. 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 PML 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.

14. *It is in this background that Section 45 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. Similarly the observation made by the Hon'ble Supreme Court in the case of V. Senthil Balaji (supra) is also necessary to be taken care of. Paragraph 21 whereof is reproduced as 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."

9. Here, in the present case, the question of liberty recognized by the constitution under Article 21 and the question of curtailment of liberty by virtue of Section 45 of the PMLA is directly involved which has been well discussed and answered in the case of ***Prem Prakash (supra)*** *and those observations have been followed by the different judgements by the various High Courts as well as the Hon'ble Supreme Court. Here in the present case, the complaint case arising out of ECIR /PTZO/14/2023 has already been concluded, after the investigation against all the petitioners on the basis of which Special Court has already taken cognizance on 10.11.2023 and 08.05.2024 and only trial has to be concluded about which the learned Sr. Counsel for the Union of India has specifically submitted that the trial shall be commenced and shall be concluded within 6-12 months but on the other hand, there are 20 different FIRs /cases* *said to be the predicate /scheduled offence. Out of 20 cases, in 13 cases investigation is still pending whereas in the rest seven cases in which cognizance has been taken, the trial has not been commenced in six cases. As such, this Court is of the firm view that there is no possibility of conclusion of the trial of predicate offence within a few years.*

10. In this background that the complaint / supplementary complaint filed by the Enforcement Directorate, investigation has been completed, charge sheets have been submitted, cognizance have been taken and there is no role of the accused persons left therein and particularly this Court is also cautious that if in future any supplementary complaint or investigation proceeds or further investigation proceeds, then the accused persons /petitioners must have to participate in the investigation and follow the Laws of Land as well as also, considering the period of custody, they cannot be indefinitely put behind bars as under trial till the conclusion of the trial of Schedule/predicate offences."

7. Upon considering the pleadings and arguments

made by the parties, this Court acknowledge that petitioner is one of the co-accused made in the supplementary complaint filed by the Enforcement Directorate dated 07.05.2024 under Section 439 and 440 of the Code of Criminal Procedure, 1973 read with Sections 44 and 45 of the PMLA in Special Trial (PMLA) Case No.02 of 2024 arising out of ECIR No.PTZO/14/2023 dated 15.03.2023. Admittedly, there are 19-21 scheduled offences out of which, trial has not been initiated in almost all cases except a few one. In 13 cases, investigation has not been completed as yet. On the other hand, the Enforcement Directorate has completed its investigation in the original complaint case as well as in the supplementary complaint case, submitted the charge-sheet and cognizance taken. The settlement has been made by the Hon’ble Supreme Court that the trial of PMLA case shall not run alone. There are in total 56 witnesses in complaint case and 32 witnesses in supplementary complaint case with huge number of documents are also involved and in result, there is no likelihood of conclusion of trial in the near future.

8. Learned Counsel for the Enforcement Directorate is not in a position to inform to this Court during argument that since when the trial shall be commenced. But, in view of the

discussions made above, this Court is of the view that trial of the complaint case is not possible in near future. The present petitioner has no criminal antecedent and he is in custody since 21.04.2024 i.e. about since last 10 months and there is no likelyhood of conclusion of trial in near future.

9. Being the protector of the Constitutional Court, this Court is of the firm view that the right granted under Article 21 of the Constitution of India is supreme particularly, in the light of the judgments in case of Manish Sisodia (supra) and V. Senthil Balaji (supra) as well as with a view that trial shall not be concluded in the recent future, this Court due to these reasons mentioned above, allow the bail application of the petitioner and therefore, he is directed to be released on bail on furnishing bail bonds of Rs.5,00,000/- (Rupees Five Lacks Only) with two sureties of the like amount each to the satisfaction of Special Judge (PMLA)-cum-District & Sessions Judge, Patna (Bihar) in connection with Special Trial (PMLA) Case No.02 of 2024 arising out of ECIR No.PTZO/14/2023, subject to the conditions as laid down under Section 437(3) of the Code of Criminal Procedure, 1973 with other following conditions as under: -

i) The petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing;

ii) the petitioner shall provide his mobile number to the officers of the Directorate of Enforcement to ascertain the whereabouts while he is on bail;

iii) the petitioner shall surrender his passport in the trial court and will not leave the country without prior permission of the learned Trial Court;

iv) the petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and the petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses;

v) The trial Court will be entitled to cancel the bail in case the petitioner deliberately delay the trial of the present case.

10. Accordingly, with the aforesaid observations and directions, this bail application is hereby allowed.

11. It is made clear that the orders passed on 05.02.2025 & 07.02.2025 shall be treated as part and parcel of the present order dated 12.02.2025.

(Dr. Anshuman, J)

Divyansh/-

U		T	