

24.06.2025

Item No.01

Ct.No.34

Ap.

Allowed

C.R.M. (R) 06 of 2025

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And

In Re : Dr. Kalyanmoy Ganguly

... Petitioner

Mr. Sandipan Ganguly,
Mrs. Manaswita Mukherjee

... for the petitioner

Mr. Dhiraj Trivedi
Mr. Arijit Chakraborty
Ms. Swapna Jha
Ms. Swati Singh

... for the State

The petitioner is a septuagenarian suffering from various ailments. He retired from the post of the President of the West Bengal Board of Secondary Education on 24th June, 2022. He has been arraigned as an accused in R.C. Nos. 2 to 5. He is on bail in the predicate offence being R.C. 5. The allegation against the petitioner is that he along with other accused persons is involved in a conspiracy to issue recommendations/appointment letters to unsuccessful candidates for filling up vacancies in Group-C and D posts in various schools of the State. It is also alleged that he has issued such appointment letters on illegal recommendations received from one Shanti Prasad Sinha and instructed his sub-ordinate Rajesh Layek to issue the appointment letters. He has been actively involved in generation and acquisition

of proceeds of crime and projecting them as untainted property.

Learned counsel for the petitioner has submitted that in course of investigation in connection with ECIR No. KLZO-II/17/2022 dated 31st May, 2022, the petitioner was interrogated and his statement recorded under Section 50 of the Prevention of Money Laundering Act (in short PMLA) at Presidency Correctional Home on 16th January, 2025. He was not arrested in connection with the case, nor shown as arrested during the period of investigation. Prosecution complaint was filed by the Enforcement Directorate (in short the E.D.) on 22nd January, 2025 against the petitioner and others. He was physically produced before the learned Special Court on 7th March, 2025 and prayed for bail. His prayer was turned down in view of Section 45 of the PMLA.

Placing reliance on the authorities in *Satender Kumar Antil v/s. Central Bureau of Investigation* reported in (2022) 10 Supreme Court Cases 51 and *Tarsem Lal v/s. Directorate of Enforcement, Jalandhar Zonal Office* reported in (2024) 7 Supreme Court Cases 61, learned counsel for the petitioner has submitted that after cognizance is taken, the petitioner cannot be arrested in exercise of power under Section 19 of the PMLA. His appearance before the learned Special Court pursuant to summons issued upon him cannot be treated as if he is in custody. The learned Special Court can direct him to furnish bond in terms of Section 88 of the Code of Criminal Procedure. He is on bail in the predicate offence.

On merits, learned counsel has submitted that the petitioner has stated in his statement under Section 50 of the PMLA that at the relevant time, appointment letters were issued after receiving recommendations from WBCSSC and the technical officer Rajesh Layek, appointed on a contractual basis, was responsible for printing the appointment letters.

The petitioner has prayed for his release in terms of Section 88 of the Code of Criminal Procedure by quashing the order passed by the learned Chief Judge, City Sessions Court, Calcutta on 7th March, 2025 in M.L. case no. 9 of 2024 in so far as he is concerned.

Vehemently opposing the prayer, learned counsel for the E.D. has submitted that the petitioner was actively involved in the alleged offence and has fraudulently executed issuance of fake appointment letters in favour of unsuccessful candidates in respect of Group-C and D posts in various schools under the Government of West Bengal. Since the petitioner was already in custody in connection with other cases and there was no threat perception or flight risk of the petitioner, his arrest in the present case was not required. The petitioner filed a bail application before the learned Special Court which was dealt with by the learned Court in its proper perspective keeping in mind the rigours of Section 45 of the PMLA. The facts in the authority in Tarsem Lal (supra) can be distinguished from the present case. The authority does not mandate grant of bail to the petitioner. If the petitioner is released on bail at this stage,

further investigation of the case may be jeopardized and there is ample possibility of the petitioner attempting to influence witnesses and tamper with evidence.

I have considered the material on record.

Prosecution complaint was filed by the E.D. on 22nd January, 2025 and cognizance taken. The petitioner was not arrested in connection with the case during investigation. Since he was in custody in connection with another case, he was produced before the learned Special Judge on 7th March, 2025. The petitioner filed a bail petition before the learned Special Judge and sought release in terms of the dictum in Tarsem Lal (supra). The bail prayer was dealt with by the learned Court on merits and turned down. The observation made by the Hon'ble Supreme Court in Tarsem Lal was not considered.

At the outset it shall be useful to set out Section 91 of the BNSS.

“Sec.91. Power to take bond or bail bond for appearance. - When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

Following the said provision, the Hon'ble Supreme Court in Tarsem Lal (supra) has observed as follows:-

- (a) If the accused was not arrested by the E.D. till filing of the complaint, while taking cognizance on a

complaint under Section 44 (1) (b), as a normal rule, the Court should issue a summons to the accused and not a warrant.

(b) If the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the Cr.P.C. (Section 91 of the BNSS).

(c) If the E.D. wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the E.D. shall seek custody of the accused by applying to the Special Court who will pass an order on the application after hearing the accused.

Learned counsel for the E.D. has tried to impress upon the Court that since the petitioner was already in custody in connection with other cases, it was not required to take him into custody in the present case for interrogation, as he was interrogated at the Presidency Correctional Home. Record reveals that though the ECIR was filed on 31st May, 2022, the petitioner was interrogated only on one occasion on 16th January, 2025 and his statement under Section 50 of the PMLA recorded at that time. The prosecution complaint was filed on 22nd January, 2025. Therefore it is crystal clear that the E.D. did not require interrogation of the petitioner from 31st May, 2022 till 16th January, 2025. Thus, the petitioner being in custody in connection with other cases cannot be a

plea for not taking him into custody in the present case. It is crystal clear that the E.D. chose not to take him into custody in this case as his custodial interrogation was not required.

It has been pointed out on behalf of the E.D. that once a bail application is filed as in the present case, rigours of Section 45 of the PMLA are attracted. It is a fact that the petitioner filed an application for bail before the learned Special Judge. But the learned Special Court should not have lost sight of the provision under Section 91 of the BNSS as well as the mandate laid down by the Hon'ble Supreme Court in *Tarsem Lal* (supra). The learned Court has misdirected itself in applying the rigours of Section 45 of the PMLA in rejecting the bail prayer when no such application was required to be filed at all. It is trite law that the E.D. cannot invoke section 19 of the Act when the accused appears before the Special Court in response to process issued against him. Since the petitioner was not arrested in course of investigation under Section 19 of the Act, the learned Special Court ought to have released him in terms of Section 91 of the BNSS and not turned down his bail application on merits. Evidently the E.D. has not filed any application before the learned Special Court seeking custody of the petitioner for conducting further investigation of the case.

In view of the provision under Section 91 of the BNSS as well as the law laid down by the Hon'ble Supreme Court, this Court is inclined to hold that the petitioner ought to be

released forthwith upon execution of bond under Section 91 of the BNSS.

Accordingly, CRM (R) 06 of 2025 is allowed.

The order passed by the learned Chief Judge, City Sessions Court, Calcutta on 7th March, 2025 in M.L. case no. 9 of 2024 in so far as the petitioner is concerned as set aside/quashed.

The petitioner be released at once in connection with the present case upon furnishing bond under Section 91 of the BNSS.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)