

24.06.2025

Item No.02

Ct.No.34

Ap.

Allowed

C.R.M. (R) 32 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 : Tridip Pal

... Petitioner

Mr. Ayan Bhattacharjee,

Mr. Riju Ghosh

Ms. Vartika Pandey

... for the petitioner

Mrs. Debjani Roy

... for the State

The petitioner was arrested in connection with C-657/2017 under Section 135 of the Customs Act, 1962 on April 25, 2017. He was released on bail in June, 2017. Prosecution complaint was filed by the Directorate of Revenue Intelligence, Kolkata (hereinafter referred to as the DRI) on June 12, 2019. On the basis of such complaint, ECIR being ECIR/KLZO/06/2019 was registered by the Enforcement Directorate (in short the E.D.) against the petitioner and four others on November 22, 2019. After completion of investigation prosecution complaint was filed by the E.D. on November 21, 2024 under Section 3/4 of the Prevention of Money Laundering Act, 2002 (PMLA). Summons was issued upon the petitioner and others on November 26, 2024. The petitioner appeared before the Learned Court on April 16, 2025 and filed two petitions, one

seeking bail and the other seeking release in terms of Section 91 of the BNSS. Bail prayer of the petitioner was turned down by the learned Court considering the nature and gravity of the offence and material in the complaint. The petitioner was taken into custody and is in custody since then.

Aggrieved by the said order, the petitioner has come up before this Court for quashing the order and releasing him in terms of Section 91 of the BNSS.

Learned counsel for the petitioner has placed reliance on the authority in *Tarsem Lal v/s. Directorate of Enforcement Jalandhar Zonal Office* reported in (2024) 6 SCR 8645 and submitted that if an accused is not arrested during investigation under Section 19 of the PMLA, the Special Court should issue summons instead of a warrant of arrest after filing of complaint. The accused should be directed to furnish bond in terms of Section 91 of the BNSS. The Hon'ble Supreme Court has deprecated the practice of taking the accused into custody in such a situation and has declared such custody to be in violation of the principle as envisaged under Article 21 of the Constitution of India. No application for further investigation was filed by the E.D. before the Learned Court on the basis of which the petitioner could have been taken into custody. He is on bail in connection with the predicate offence. Since the petitioner was not arrested under Section 19 of the PMLA prior to filing of the prosecution complaint, he ought to have been released upon furnishing bond in terms of Section 91 of the BNSS.

Vehemently opposing the prayer, learned counsel for the E.D. has submitted that the petitioner did not respond to the summons issued upon him by the authority during investigation and avoided the same on the pretext of health issues. Incriminating documents, cash and foreign currency were recovered from his two houses in Kolkata. In his statement recorded under Section 50 of the PMLA, the petitioner admitted his involvement in smuggling gold and receiving commission to the tune of Rs. 12 to 15 lakhs. He played the principal role in smuggling of gold from Bangladesh and is a habitual offender.

Learned counsel has submitted that the issue which fell for consideration before the Hon'ble Supreme Court in *Tarsem Lal (supra)* can be distinguished from the present case and the observation made therein cannot be said to be the *ratio decidendi* applicable herein. The Hon'ble Supreme Court, in paragraph 21 of the judgment, has spoken about the practice followed by the Special Courts under the PMLA and observation made in the judgment does not restrain the Special Courts to take into custody any accused in an appropriate situation. Bail prayer of the petitioner was rejected by the learned Special Court considering the material on record and prima facie involvement of the petitioner in the alleged crime. In view of the stringent conditions of bail laid down under Section 45 of the PMLA, the petitioner is not entitled to any relief. Learned counsel has placed reliance on the authority in *Serious Fraud*

Investigation Office v/s. Aditya Sarda reported in 2025 SCC OnLine SC 764.

I have considered the material on record.

It is not in dispute that the petitioner was not arrested by the E.D. under Section 19 of the PMLA in course of investigation till filing of prosecution complaint. Summons was issued upon the petitioner by the learned Special Court pursuant to which the petitioner appeared before the Court and filed two petitions, one for bail and the other for his release under Section 91 of the BNSS. The second application was not taken into consideration by the learned Court. The bail application was rejected considering the material on record.

At this juncture, it shall be useful to reproduce 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.”

In other words, when any person appears before the Court pursuant to a summons or warrant, the Court may release him upon execution of a bond/bail bond for his appearance in such Court. The Hon'ble Supreme Court, in the authority 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.

The Hon'ble Supreme Court has made it clear that the judgment deals with a fact situation where the accused is not arrested by the E.D. in exercise of power under Section 19 of the PMLA till the complaint was filed. The *ratio decidendi* of the judgment is applicable in the present case. It is trite law that the object of issuing summons is to secure the presence of the accused before the Court and not taking him into custody.

True, the petitioner filed an application for bail before the learned Special Court. But the learned Special Court ought not to have lost sight of the provision laid down under

Section 91 of the BNSS as well as the mandate of the Hon'ble Supreme Court in *Tarsem Lal (supra)*. The learned Court has misdirected itself in applying the rigours of Section 45(1) of the PMLA in rejecting the bail application when no bail application was required to be filed at all. This Court cannot remain oblivious of the fact that despite serious allegations against the petitioner, the E.D. chose not to arrest him during investigation by invoking Section 19 of the Act. In such a situation, when the petitioner appeared before the learned Special Court in response to the summons issued upon him, the learned Special Court ought to have released him upon execution of bond under Section 91 of the BNSS. There was no scope for the learned Court to deal with the bail application on merits or turn down the same, moreso, since no application has been filed by the E.D. seeking custody of the petitioner for conducting further investigation of the case.

The authority in *Serious Fraud Investigation Office (supra)* deals with a situation where non-bailable warrant was issued since the accused kept on avoiding the bailable warrants. Thereafter a proclamation proceeding under Section 82 of the Code of Criminal Procedure was also initiated by the learned Special Court. The fact situation of the case can be distinguished from the present one.

In the said backdrop, this Court is inclined to hold that despite the gravity of the allegations against the petitioner and material that has transpired against him during investigation, the petitioner ought to be released forthwith

upon execution of bond under Section 91 of the BNSS in view of the law laid down by the Hon'ble Supreme Court in Tarsem Lal (supra).

Accordingly, CRM (R) 32 of 2025 is allowed.

The order passed by the learned Chief Judge, City Sessions Court, Calcutta, designated as the Special Court under the PMLA, on April 16, 2025 in M.L. case no. 08 of 2024 in so far as the petitioner is concerned is set aside/quashed.

The petitioner be released at once upon furnishing bond under Section 91 of the BNSS subject to condition that he shall appear before the learned Special Court on every date of hearing and shall not tamper with evidence or intimidate witnesses in any manner whatsoever.

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

(Suvra Ghosh, J.)