IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3946 OF 2024

Mohammed Farooq Mohammed Hanif Shaikh ... Applicant
versus
Central Bureau of Investigation and Anr. … Respondents

Mr. Vikram Chaudhary, Sr. Advocate with Ms. Diya Bhagwan, Ms. Neha Ahuja i/by Mr. Abhishek More, for Applicant.
Mr. D.P.Singh, Sr. Advocate and Special PP with Mr. Kuldeep Patil, Mr. J.K.Sharma, Mr. Naagesh Khedkar, for Respondent No.1 and for Applicant in Appln. 424 of 2022.
Mr. A.A.Naik, APP for State.

CORAM: N.J.JAMADAR, J.

CLOSED FOR ORDERS : 6 DECEMBER 2024
PRONOUNCED ON : 2 JANUARY 2025

ORDER :

1. The applicant, who is arraigned in Special Case No.519 of 2022 arising out of RC 0682017E0004 registered by CBI-EOW, Mumbai for the offences punishable under Sections 120-B, 201, 420, 465, 467, 468 and 471 of the Indian Penal Code and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, has preferred this application to enlarge him on bail.

<u>THE CHARGE</u>

2. On 13 May 2017, on the basis of a reliable ‘source information’, CBI registered RC 0682017E0004 against Mr. Manish Shyamdasani and Mr. Mungaram Dewasi, the directors of M/s. Stelkon Infratel Pvt. Ltd., as it

transpired that the said persons had indulged in large scale illegal foreign remittances under fraudulent imports of goods, during the year 2015-16. It transpired that 13 entities located in Mumbai, comprising of 11 firms and two companies, opened current accounts in various banks, including Punjab National Bank and Central Bank of India and huge amount of cash was collected and layered as RTGS credits into the accounts of those 13 entities. Subsequently, those entities submitted forged documents like, Bill of Entries, invoices, Bill of lading etc., purportedly issued by Jawaharlal Nehru Custom House and New Custom House and sent foreign exchange remittances in USD equivalent to Rs.2252 Crores in 1211 instances to the various entities in Hongkong, and, thereby caused loss of foreign exchange reserve of India.

3. It was, inter alia, alleged that the applicant with the assistance of the co-accused induced poor people to part with Know Your Customer (KYC) documents such as PAN and Aadhar Card for petty amounts. Those persons were made proprietors/directors of the said 13 fictitious entities. The applicant obtained import export Code (IEC) from the Director General of Foreign Trade and opened bank accounts of those entities. Huge cash amount was collected from various persons to send the same to Hongkong. The said cash was layered as RTGS credits into the accounts of the said 13 fictituous entities floated by the applicant and the co-accused. Thereafter, low value goods were imported through IEC of the said entities. The applicant and the

co-accused prepared forged Bill of Entries showing inflated high USD value and supporting documents like, Invoices, Bill of Lading etc., and submitted to the banks. The banks were, thus, made to remit huge forex equivalent to Rs.2188.32 Crores from the accounts of those 13 entitles to various accounts in Hongkong, and, thereby, wrongful loss of forex reserve was caused to the Government of India.

4. It is alleged that the applicant had a wrongful gain by collecting commission @ Rs.3/- per USD from the said cash providers to the tune of approximately Rs.67 Crores. Allegations of destroying evidence by asking his wife Aasma Farooq Shaikh (A7) to destroy the documents, computers, rubber stamps and the material and objects used for preparing forged documents, are also made.

5. Post completion of investigation, initially chargesheet came to be lodged on 19 May 2022 against the co-accused. The applicant came to be arrested on 25 May 2024. Post further investigation, supplementary chargesheet came to be lodged against the applicant and his wife Aasma (A7), on 22 July 2024.

PMLA CASE

6. It would be contextually relevant to note that Enforcement Directorate (ED) registered ECIR MBZO/03/2017 treating RC 0682017E0004 as a Scheduled offence, under the Prevention of Money Laundering Act, 2002

(PMLA). On 23 April 2018, the applicant was arrested by ED in the said ECIR MBZO/03/2017. Bail Applications preferred by the applicant in PMLA case were rejected. On 6 June 2019, in WP no.2829 of 2019, on account of pleaded cause of grave ailment of the wife of the applicant, the Division Bench of this Court was persuaded to permit the Petitioner (applicant herein) to attend to his wife either in the hospital or at home, by keeping the applicant in custody of minimum two police officials deputed by the Superintendent, Central Prison, Taloja, upto 18 June 2019. By a further order dated 25 June 2019, the order dated 6 June 2019 permitting the house custody of the applicant was extended till 2 July 2019.

7. In Special Leave Petition (Cr.) Nos.4322-4324 of 2019, by an order dated 3 July 2019, the Supreme Court directed that the aforesaid orders dated 6 June 2019 and 25 June 2019 passed by the Division Bench of this Court in so far as the custody of the applicant, shall continue till further orders. In Criminal Appeal No.1269 of 2017, with SLP (Crl) No.6922 of 2018, by an order dated 28 April 2023, the Supreme Court found that there was no ground to recall or modify the aforesaid order.

8. Eventually, in Criminal Writ Petition No.1153 of 2023 by an order dated 5 December 2023, the Division Bench of this Court after noting that the Petitioner (applicant herein) has been in custody / house custody for more than five years and eight months for an offence which entailed the maximum

punishment of seven years, directed the release of the applicant on bail.

9. The prosecution alleges that a day prior to the pronouncement of judgment in WP No.2937 of 2023 filed by the Petitioner for quashing the FIR RC 0682022E0011 and Writ Petition No. 495 of 2023, for clubbing the investigation of the said FIR with the investigation in the instant FIR, the applicant made himself scarce. As the applicant could not be located despite diligent efforts, a non-bailable warrant was issued by the Special Court. Eventually, the applicant came to be arrested from Sahara Star Hotel, Vile Parle, Mumbai.

SUBMISSIONS

10. Mr. Chaudhary, learned Senior Advocate for the Applicant, submitted that the arrest of the applicant in the instant case was neither necessary nor warranted by the circumstances of the case. While the applicant was in custody in PMLA case for almost 14 months, no effort was made by the CBI to obtain the custody of the applicant either by way of arrest or by setting a production warrant. The applicant had spent more than five years and 10 months in custody in the PMLA case, the genesis of which is in the instant FIR, as it forms the Scheduled Offence, on the strength of which ECIR has been registered. Both the cases are inexplicably interlinked, interwoven and intertwined with each other. Therefore, continued detention of the applicant, as an under-trial prisoner, is wholly in derogation of the constitutional

guarantee of life and personal liberty.

11. Mr. Chaudhary further submitted that the investigation, on the own showing of the investigating agency, is still underway. Principal chargesheet and one supplementary chargesheet have already been filed, citing 307 witnesses and 2643 documents. It is extremely unlikely that the trial can be commenced and concluded within a reasonable period. Therefore, as the combined period of incarceration now exceeds six and half years, the applicant deserves to be enlarged on bail. Reliance was placed on a number of decisions of the Supreme Court to bolster up the submission that a prolonged period of incarceration, without a real prospect of trial, would constitute punishment without trial.

12. Mr. Singh, learned Senior Advocate for CBI, stoutly resisted the prayer for bail. It was submitted that usual parameters which apply for bail in a normal case, may not govern the case at hand. The applicant was the kingpin of the conspiracy to defraud the public exchequor. What exacerbates the situation, according to Mr. Singh, was the conduct of the applicant, which has been judicially commented upon. The applicant tried to scuttle the investigation. The applicant misled the investigator as well as the Courts. Moreover, the Applicant caused the destruction of evidence by asking co-accused to destroy all the forged and fabricated documents. Mr. Singh endeavoured to demonstrate that each of the documents which were

submitted to the banks to remit the foreign exchange, by making a farce of import of low value goods, was forged. The applicant has also threatened the witnesses. The applicant went on to make false and motivated allegations against the officers of CBI so as to derail the investigation and obtain undue advantage. In these circumstances, the applicant, who is involved in such a huge fraud, does not deserve to be enlarged on bail.

13. Mr. Singh submitted with tenacity that the applicant cannot be permitted to take advantage of the house custody which, in itself, was a product of disingenuous act on the part of the applicant. Investigation got delayed on account of the hindrances put by the applicant, at every stage, and by resorting to all sorts of proceedings.

14. Mr. Singh endeavoured his best to impress upon the Court that if considered through the prism of the role, antecedents and conduct of the applicant, there is a strong possibility of tampering with evidence and threatening the witnesses, and, even the applicant not being available for trial, in the event he is released on bail.

CONSIDERATION

15. At the outset, it is necessary to note the interplay between the instant crime and PMLA case. Incontrovertibly, the instant crime i.e. RC 0682017E0004 registered by CBI was construed as a predicate offence and ECIR MBZO/03/2017 was registered by ED. Indisputably, the applicant was

arrested by ED in PMLA case and remained in custody till 10 June 2019, and, thereafter, the Applicant remained in house custody till he was released on bail by an order dated 5 December 2023. The applicant was, thereafter, arrested in the instant case on 25 April 2024.

16. The nature of the custody which the applicant suffered in the PMLA case need not detain this Court. The order of the Division Bench, dated 5 December 2023, records in clear and explicit terms that, as a matter of fact the applicant had been in custody / house arrest for more than five years and 8 months, for an offence which entailed maximum punishment of seven years. Thus, the period of incarceration then undergone by the applicant had exceeded a substantial part of the prescribed sentence i.e. more than 3/4th.

17. Mr. Singh, learned Senior Advocate for CBI made an endeavour to urge that the two cases stand on a different footing.

18. Undoubtedly, the offence of 'money laundering' under Section 3 of the PMLA is a standalone offence. It is independent of the scheduled offence. Yet the co-relation between the Scheduled offence and PMLA case cannot be completely lost sight of. Nor the two cases be considered in water right compartments. The existence of a Scheduled offence is a *sine qua non* for alleging the existence of proceeds of crime. The property derived or obtained by a person as a result of criminal activity relating to 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 the PMLA can be proved only if the Scheduled offence is established in the prosecution for the Scheduled offence. It is, therefore, in the fitness of things that the trial of the Scheduled offence precedes the trial of the case under PMLA.

19. A reference to the decision of **V. Senthil Balaji (supra)**, would be apposite at this stage. The observations of the Supreme Court in paragraph Nos.21 and 29 illuminate the path. They read 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 fo the trial of the offence under Section 3 of the 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.
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> 29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences, and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

20. The Supreme Court has enunciated in no uncertain terms that the absence of real prospect of commencement and conclusion of the trial in the scheduled offences, and, consequently, the PMLA offence, is a decisive consideration for the grant of bail, as in such a situation the continued detention as an under-trial prisoner infringes the guarantee under Article 21 of the Constitution of India.

21. Thus, it can be inferred that, it is one thing to state that an offence under PMLA is a distinct offence and completely another to urge that whatever may be the period of incarceration under the PMLA case, which arose out of the scheduled offence, in which the accused is subsequently arrested, the said period of incarceration in the PMLA case is not a factor to be considered while deciding the prayer for bail in the scheduled offence. In the case at hand, such period of incarceration has exceeded five and half years.

22. In this application, the Court may not delve into the justifiability of the reasons, which allegedly precluded the CBI from obtaining the custody of the applicant for the purpose of investigation into the scheduled offence (while the applicant was incarcerated in the PMLA case), yet, it would be suffice to note that the period of five years and eight months is too long to countenance any excuse for not being able to obtain the custody of, or interrogate, the applicant, while he was in custody in the PMLA case.

23. The submission that in the PMLA case, the applicant was not granted bail on merits, also does not advance the cause of the submission on behalf of the Respondent – CBI. Moreover, in the instant case as well, the investigating agency has submitted the principal chargesheet as well as one supplementary chargesheet. If it is urged that the investigation is still underway, and, therefore, the applicant cannot be released on bail, in the peculiar facts of the case, the said submission operates as a double edged tool. If the investigation is still incomplete, it is extremely unlikely that the trial can commence, much less conclude, in a near future.

24. The applicant has been in custody in this case from 25 April 2024. On the basis of the investigation conducted till date, the prosecution proposes to examine 307 witnesses and relies upon 2643 documents running into 66,000 pages. Aforesaid being the state of the investigation and the prosecution, by no stretch of imagination, can it be said that the trial would conclude within a reasonable period. It is trite law that a long period of incarceration without a realistic prospect of expeditious conclusion of the trial impairs the right of the accused to speedy trial, which has been considered to be a facet of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. It has been held that, even the statutory restrictions in the matter of grant of bail, like the one under Section 45 of the PMLA, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 21 of the

Maharashtra Control of Organized Crime Act, 1999 melt down in the face of such long period of incarceration without trial. ***(Union of India V/s. K.A.Najeeb)***[1].

25. In a series of recent pronouncements, namely, **Manish Sisodia V/s. Directorate of Enforcement**[2], **Kalvakuntla Kavitha V/s. Directorate of Enforcement**[3], **Arvind Kejriwal V/s. Central Bureau of Investigation**[4] and **V. Senthil Balaji V/s. The Deputy Director, Directorate of Enforcement**[5], the Supreme Court has emphasised that prolonged incarceration of an accused, before being pronounced guilty of the offence charged, should not be permitted to become punishment without trial. The pristine rule, "bail is a rule and refusal is an exception", has been emphatically reiterated.

26. Mr. Singh submitted that the nature and gravity of the accusation against the applicant, who was the mastermind behind the humongous fraud, is further aggravated as the economic offences, which constitute a class apart, have the propensity to affect the economic system to the detriment of the country. Thus, usual parameters for grant of bail may not apply. Reliance was placed by Mr. Singh on the decision of the Supreme Court in the case of **Y.S.Jagan Mohan Reddy V/s. CBI**[6].

1 (2021) 3 SCC 713
2 2024 SCC Online 1920
3 Cri. Appeal No.3523 of 2024 dt. 27 August 2024
4 Cri. Appeal No.3816 of 2024 dt. 13 Sept. 2024
5 Cri. Appeal No.4011 of 2024 dt. 26 Sept. 2024
6 (2013) 7 SCC 439

27. It is trite, the economic offences have the propensity to cause large scale damage to the economy of the country and have deleterious social and economic ramifications. However, there is no warrant to treat every economic offence as a class apart and deprive the personal liberty of the person accused of an economic offence. This position was clarified by the Supreme Court in the case of **Satender Kumar Antil V/s. Central Bureau of Investigation**[7], in the following words :

> "Economic Offences (Category D)
>
> 90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in **P. Chidambaram V/s. Directorate of Enforcement**[8], after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the Court to categorize all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field…………"
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> (emphasis supplied)

28. The resistance to bail on the ground of the conduct of the applicant,

7 (2022) 10 SCC 51
8 (2020) 13 SCC 791

especially the alleged acts of destroying evidence, making himself scarce and threatening one of the witnesses is required to be appreciated in the light of the time lag. The instant FIR has been registered in the year 2017. The evidence was allegedly destroyed after the applicant was arrested by ED, in the year 2018. It could be urged that, the applicant was pursuing the remedies, may be not wholly *bonafide*, in the hope of obtaining protective orders. Thus, the fact that the applicant was required to be arrested after obtaining non-bailable warrant cannot be arrayed against the applicant to detain him as an under-trial prisoner, for an indefinite period. The proper course would be to put the applicant to stringent terms.

29. For the forgoing reasons, I am inclined to exercise the discretion in favour of the Applicant. Hence the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Mohammed Farooq Mohammed Hanif Shaikh be released on bail in RC 0682017E0004 registered by CBI-EOW, Mumbai on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before CBI-EOW, Mumbai on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall surrender his passport before the Learned Special Judge and shall not leave the Mumbai Metropolitan Region without the prior permission of Learned Special Judge.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 02/01/2025 19:12:13