

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4998 OF 2024

Mangaldas Vitthalrao Bandal .. Applicant
Versus
Directorate of Enforcement and Anr. .. Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 5366 OF 2024**

Hanumant Sambhaji Kemdhare .. Applicant
Versus
Directorate of Enforcement and Anr. .. Respondents

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- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Shailesh Kharat, Mr. Tanmay Kate, Mr. Aaditya Saswade, Mr. Onkar Choudhari and Mr. Ashwet Bhoir, Advocates for Applicant in Bail Application No.4998 of 2024.
- Mr. Akhilesh Dubey a/w. Mr. Vagish Mishra, Mr. Amit Dubey, Mr. Uttam Dubey, Mr. Rajuram Kuleriya, Mr. Varad Dubey, Mr. Shubham Sharma, Mr. Emad Khan, Mr. Alex Dsouza and Mr. Sahil Upadhyay, Advocates for Applicant in Bail Application No. 5366 of 2024 i/b Law Counsellors.
- Mr. Hiten S. Venegavkar a/w Mr. Aayush Kedia and Ms. Diksha Ramnani, Advocates for Respondent No.1 – E.D.
- Ms. Savita M. Yadav, APP for Respondent No.2 – State in Bail Application No.4998 of 2024.
- Mr. Hitendra J. Dedhia, APP for Respondent No.2 – State in Bail Application NO. 5366 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025

P.C.:

1. These two Bail Applications are heard together since they arise out of the same crime being ECIR/MBZO-II/03/2020 under Sections 3 and 4 of MPID Act¹ based on FIR No.26 of 2020 registered with Shivaji Nagar Police Station, Pune on 08.01.2020 under Sections 406, 408, 409, 420, 468, 471 and 34 of IPC².

2. Applicant in Bail Application 4998 of 2024 is alleged to have defrauded investors by embezzling their funds. FIR came to be registered against the Applicant on 08.01.2020 he was arrested on 18.06.2021. After undergoing incarceration for a period of 20 months in connection with the FIR, Applicant was released on bail on 02.02.2023. On 21.08.2024, Applicant was again arrested, now in connection with the ECIR which arises out of the same FIR.

3. Applicant in Bail Application 5366 of 2024 is also indicted in the same FIR on similar allegations. He was arrested on 08.09.2021. After undergoing incarceration for a period of 18 months in connection with the FIR, Applicant was released on bail on 02.03.2024. On 06.09.2024, Applicant was again arrested, now in connection with the ECIR which arises out of the same FIR.

4. Applicants' incarceration in connection with the ECIR has been for about 7 months as of date, but their total period of incarceration in

¹ Maharashtra Protection of Interest of Depositors (MPID) Act, 1999

² Indian Penal Code, 1860.

the predicate and PMLA offence would tally upto 26 and 24 months respectively. Issue argued by learned Advocates for consideration is whether Applicants are entitled for bail considering their long incarceration as trial is unlikely to commence and/or probably completed in the near future.

5. Mr. Ponda, learned Advocate appearing on behalf of the Applicant in Bail Application No. 4998 of 2024 would submit that Applicant has been arrested after a substantial period of 4 years post registering of the ECIR case in 2020. He would submit that out of the period of 4 years that Applicant had been in custody for a period of 20 months in connection with the predicate offence, the prosecuting agency could have secured his custody for interrogation at that stage or even after his release on bail. He would submit that there is no necessity for seeking judicial custody of Applicant at this belated stage especially when Applicant has been fully co-operated with the investigation on several occasions when he was summoned while in jail as also when he was on bail. He would pray for the Application to be allowed in view of the slim likelihood of the trial commencing and/or concluding in the near future as Applicants have suffered incarceration for a total period of 2 years and 2 months as of today.

6. Mr. Dubey represents Applicant in Bail Application No. 5366 of 2024. His submissions are on identical grounds as that of Mr. Ponda.

For brevity they are not reiterated herein. Applicants herein is in the same position as Applicant in Bail Application No.4998 of 2024 in the same crime as co-accused. He would further submit that in his case, the offence is alleged to have been committed in 2019 which was after the Applicant had resigned from the service of the bank in which he was employed. He would submit that no arrest can be made in a routine manner on a mere allegation and the power of arrest should not be made in a mechanical manner as has been done in the present case. He would submit that the Applicant has co-operated with the investigation and no purpose would be served by keeping him languishing in custody. He would pray for the Application to be allowed.

7. Mr. Venegavkar, learned Public Prosecutor while vehemently resisting both the Bail Applications of Applicants would restrict his submissions in a narrow compass. He would submit that the Court should consider the PMLA³ offence as a distinct offence apart from the predicate offence even though it may arise out of the same offence because when juxtaposed with the predicate offence the offence under PMLA involves generation laundering of funds after the predicate offence is committed. He would submit that it would be inappropriate to seek Bail on the ground of long incarceration in the

3 Prevention of Money Laundering Act, 2002

above circumstances based on the period of custody in connection with the predicate offence as it is distinctive in nature from the PMLA offence. He would persuade the Court to sever the period of custody in the predicate offence from that in the PMLA ECIR offence. He would therefore pray for rejection of bail.

8. I have heard the learned Advocates at the bar and with their able assistance, perused the record of the case.

9. Courts exercising jurisdiction under Section 439 have been conferred by certain powers. However these powers get restricted when there exists a *non-obstante* clause like the one under Section 37 of NDPS Act⁴ or the one under Section 45 of PMLA. The Courts have to satisfy itself of certain conditions before granting bail to the Accused in such cases. However it is to be noted that the conditions do not act as an embargo on bail.

10. In the case of *Emperor vs H.L. Hutchinson*⁵ the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the

⁴ The Narcotic Drug and Psychotropic Substances Act, 1985.

⁵ AIR 1931 ALL 356

discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

11. Apart from the general conditions that are considered while granting bail which are *inter alia* the possibility of submitting to trial, antecedents of Applicant, his likelihood of influencing witnesses or tampering with evidence, the additional conditions such as ones provided in Section 37 of NDPS Act or Section 45 of PMLA Act add up to the ensure that high risk menace which are detrimental to the society at large such as drug trafficking or economic offences are kept in check and that socio economic balance of the society at large is not hampered under the garb of individual rights. It was with the intention

to curb various kind of high risk menace in the society that such conditions were brought into the matrix.

12. In this regard, I would like to refer to the provisions of Section 45 of the PMLA which reads as under:-

45. Offences to be cognizable and non-bailable - (1)

¹[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence ²[under this Act] shall be released on bail or on his own bond unless--]

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) **where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:**

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, ³[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by--

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

⁴[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) **The limitation on granting of bail specified in ⁵*** sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.**

⁶[Explanation.--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]"

13. Attention is drawn to the observations made by the Supreme Court in paragraph Nos. 24 to 28 of the decision in the case of *V Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement*⁶. Paragraph Nos. 24 to 28 read as under:-

"24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. **A higher threshold is provided in these statutes for the grant of bail.** By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a non-obstante Clause for overriding the provisions of Sections 437 to 439 of the Code of Criminal Procedure. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. **Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii)**

6 AIR 2024 SC 4760

of the PMLA, cannot become a tool which can be used to incarcerate the Accused without trial for an unreasonably long time."

14. Courts have time and again held that long incarceration is a good enough ground to grant bail even in cases where such conditions against grant of bail exists and where there is substantial delay in trial. This is because it is usually seen that where there exists an additional condition against grant of bail there also exists a mechanism to aid in speedy disposal of cases concerning the offences arising out of such statute. The custody of Applicants in connection with the PMLA offence is for a rather short duration of about six months. It is realistic that Special Court cannot be expected to complete with trial within such a short duration but the facts of the case are rather peculiar. Both FIR and ECIR in the present case were registered in the year 2020 but Applicants were not arrested in connection with the ECIR for a period of 4 years. In the interregnum, Applicants underwent imprisonment for a substantial period of about 20 and 18 months respectively. It was only sometime after their release on bail and after 4 years of registering the ECIR that they came to be arrested in the present case.

15. The Supreme Court in the case of *A.R. Antulay V/s R.S. Nayak and Anr.*⁷ has held that right to speedy trial flowing from Article

⁷ 1988 AIR 1531

21 encompasses all stages of trial which are inclusive of investigation and there is no reason for Courts to take a restricted view. Relevant portion of paragraph No. 86 of the Judgement reads as under:-

“(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.”
(emphasis supplied)

16. Although it is contended that whether the incarceration in the predicate offence and PMLA offence is to be considered as a whole or in a vacuum. I deem that this is not a question that needs to be answered by this Court exercising its powers under Section 439. In the facts of the present case where the Applicants were in custody for a prolonged period of time, the prosecution failed to perform its duty to initiate the investigation in the ECIR. Now that they have secured their liberty after undergoing the hard turmoil of litigation process, prosecution cannot be given a leeway to reclaim their liberty on the ground of their own lacking to start the investigation in time. As observed in the case of ***A.R. Antulay (Supra)*** the right to speedy trial flowing from Article 21 encompasses all stages of trial which are

inclusive of investigation and there is no reason for Courts to take a restricted view. Applicants' appearance before the investigation agency can be taken care of by imposing appropriate conditions.

17. The learned PP has vehemently argued that the period of incarceration undergone by the Applicant under the PMLA offence is to be treated as distinct and separate from the period of incarceration suffered by the Applicants under the predicate offence.

18. Hence he would argue that the period of long incarceration under the PMLA offence of 7 months cannot be considered to be long incarceration in enabling the Applicants to seek bail. It is seen that in the present case the facts are not in dispute. Admittedly Applicants have undergone a substantial sentence pending trial in the predicate offence. Thereafter both Applicants were released on bail by the learned Trial Court. Lodgment of the PMLA offence is not thereafter rather lodgment of the PMLA offence against both Applicants is in the year 2020 alongwith the predicate offence. Despite that Applicants were not arrested in the PMLA offence. One of the reasons could be that investigation was underway. However, *prima facie* from the record it is seen that both Applicants have fully cooperated with the prosecution agency. Prosecution agency did not feel the necessity to arrest the Applicants despite they having been interrogated several times in the past pursuant to their arrest in the

predicate offence and even thereafter after their release on bail for a considerable period of time in that offence. That apart, even after the date of their release on bail for a substantial period of time prosecution agency did not feel the need to arrest the Applicants. The need and necessity to arrest the Applicants on the belated stage *prima facie* raises a serious question mark on the timing of the arrest, rather on the arrest itself.

19. In this regard, I would like to place reliance on the observations of the Supreme Court in paragraph No.22 of the judgment dated 13.09.2024 passed by the Supreme Court (concurring decision by Justice Ujjal Bhuyan, J.) in the case of ***Arvind Kejriwal Vs. Central Bureau of Investigation*** in Criminal Appeal No.3816 of 2024. The said decision delves upon the necessity and timing of the arrest while concurring with the opinion that the Appellant therein should be released on bail. Paragraph No.22 of the above judgment reads thus:-

“22. In so far arrest of the appellant by the CBI is concerned, it raises more questions than it seeks to answer. As already noted above, CBI case was registered on 17.08.2022. Till the arrest of the appellant by the ED on 21.03.2024, CBI did not feel the necessity to arrest the appellant though it had interrogated him about a year back on 16.04.2023. It appears that only after the learned Special Judge granted regular bail to the appellant in the ED case on 20.06.2024 (which was stayed by the High Court on 21.06.2024 on oral mentioning) that CBI became active and sought for custody of the appellant which was granted by the learned Special Judge on 26.06.2024. Even on the date of his arrest by the CBI on 26.06.2024, appellant was not named as an accused by the CBI. Only in the last chargesheet filed by the CBI on 29.07.2024, appellant has been named as an accused.”

20. In this context of the present case, what is crucial to be noted is that offence under the PMLA case emanates from the predicate offence leading to investigation by the ED under the PMLA.

21. In that view of the matter, I am not in agreement with the submissions made by the learned PP and APP that the period of sentence undergone by the Applicants under the predicate offence should be treated distinctly and separately apart from the period of sentence undergone under the PMLA offence. However *prima facie* from the record it is seen that both the Applicants are and have fully cooperated with the investigation.

22. In view of the above, the prosecution cannot justify the arrest and continued detention of the Applicants now that they are seeking bail post incarceration.

23. In view of the above *prima facie* observations and facts delineated herein above Applicants before me are entitled for bail. Bail Applications are allowed on the following terms and conditions:-

- (i) Applicants are directed to be released on bail in ECIR/MBZO-II/03/2020 on furnishing PR. Bond in the sum of Rs. 50,000/- each with one or two sureties in the like amount;

- (ii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iii) Applicants shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (iv) Applicants shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicants shall surrender their passports with the Trial Court within one week after their release;
- (vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;

(vii) Before their actual release from jail, Applicants shall furnish their respective address where they proposes to reside after their release from jail, to the concerned Police Station and also to the trial Court; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.PC. i.e. for cancellation of Bail.

24. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence uninfluenced by the present order and strictly in accordance with law. It is also clarified that the common order is for the sake of convenience and Applicants shall not be adversely impacted by the conduct of the other Applicants including but not limited to infringement of bail conditions.

25. Bail Applications are allowed and disposed.

Ajay

[MILIND N. JADHAV, J.]