

Hitesh Gandhi vs Enforcement Directorate on 27 September, 2024

Hitesh Gandhi vs Enforcement Directorate .

Cr. MP(M) No.2169 of 2024 27.09.2024 Present: Mr. Ashok Sharma, Senior Advocate with Mr. Jyotirmay Bhatt, Advocate, for the applicant.

Mr. Balram Sharma, DSGI with Mr. Ajeet Singh Saklani, Standing Counsel, assisted by Mr. Sunil Kumar, Enforcement Officer and Mr. Neeraj Garg, Assistant Enforcement Officer, for the respondent.

Petitioner [Hitesh Gandhi], has come up before this Court under Section 483 of the Bhartiya Nagrik Suraksha Sanhita [BNSS] 2023, originating from Case File bearing No.ECIR/SHSZO/04/2019 dated 22.07.2019, registered with Enforcement Directorate Office [ED], Sub Zonal Office, Rani Villa, Bagrian House, Strawberry Hills, Chhota Shimla, Shimla, [HP].

2. Upon listing of the instant petition [Cr.MP(M) No.2169 of 2024], the Coordinate Bench of this Court passed an order on 26.09.2024, directing the Respondent to file Status Report/Reply in the matter, on or before 27.09.2024.

3. Facts, reveal that the accusation was made against the petitioner on 22.07.2019. It is averred that the petitioner approached this Court, on several occasions, for grant of interim bail as well as regular bail, as per the details spelt out in the petition.

4. Notably, the bail petitioner [Hitesh Gandhi], .

had filed application for interim bail i.e. Cr.MP(M) No.2034 of 2024, wherein, the Coordinate Bench of this Court, disposed off the same, vide orders dated 16.09.2024, by granting interim bail to the petitioner, with directions to him, to surrender before the Jail Authorities on 28.09.2024. The operative part of the orders dated 16.09.2024 read as under :-

"13. Considering the given facts and circumstances, of the case, this Court is of the opinion that the prayer of the applicant for interim bail can be allowed.

14. It has also been submitted by learned Senior Counsel that the applicant is ready to abide by, any condition, which would be imposed by this Court, in case, interim bail is allowed in favour of the applicant.

15. It is not in dispute that the passport of the applicant is with the Central Bureau of Investigation in case No. RC0962019A0002 dated 07.05.2019, under Sections 409, 419, 465, 466, 467 read with Section 120B of Indian Penal Code and Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

16. Considering this fact, this Court is of the view that the interim bail application is liable to be allowed, so that the applicant could be able to appear in the proceedings before the Bank.

17. Consequently, the bail application is allowed and the applicant is ordered to be released, on interim bail, on and with effect from 18th September, 2024 till 28th September, 2024, in the case, as mentioned above, on his furnishing personal bail bond, in the sum of Rs.2,00,000/-, with two sureties, in the like amount, to the satisfaction of learned trial Court. This order, however, shall be subject to the following conditions:

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a) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

b) The applicant shall not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer;

c) The applicant shall not leave the territory of India without the prior permission of the Court.

18. The applicant is directed to surrender, before the jail authorities, on 28th September, 2024, positively by 05:00 p.m.

19. Needless to observe that the applicant shall not seek any exemption to appear before the learned trial Court, on the date(s) fixed, if any, in the trial, during the period of interim bail.

20. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as, these observations, are confined, only, to the disposal of the present bail application.

21. It is made clear that respondent-ED would be at liberty to move appropriate application, in case, any of the bail conditions, is found to be violated, by the applicant."

5. Upon listing of the case today, Mr. Ashok Sharma, Learned Senior Counsel has apprised this Court that the bail petitioner [Hitesh Gandhi] has moved a petition for regular bail [i.e. Cr.MP No.1746 of 2024], before this Court, in which arguments have been addressed and judgment has been reserved by the Coordinate Bench of this Court vide order dated .

22.08.2024.

6. In instant petition i.e. Cr.MP(M) No.2169 of 2024, the bail petitioner has come up with the prayer that the Punjab National Bank has taken the physical possession of his property i.e. Hotel Holiday Inn, Panchkula on 03.09.2024, which values to the tune of more than, Rupees Three Thousand Crores [Rs.3000/- Crores], whereas the amount allegedly payable by the petitioner to the Bank is Rupees One Hundred Crores [Rs.100/- Crores] only. It is averred that the petitioner has to undertake mediation proceedings with the Bank, so as to safeguard his aforesaid asset(s)-property.

7. Respondent has filed a reply, on the affidavit dated 27.09.2024, of Assistant Director, Directorate of Enforcement, Ministry of Finance, Shimla, with similar averments as made in the earlier bail applications, by stating that the petitioner is involved in money laundering, to the tune of Rs.14,92,37,220/- [Rupees Fourteen Crore Ninety Two Lakh Thirty Seven Thousand Two Hundred Twenty] qua which, the Learned Special Judge has already taken cognizance of the offence vide order dated 23.02.2024. Mr. Balram Sharma, Learned Deputy Solicitor General of India, submits that the Hon'ble High Court of Madras, in CrI.OP No.1525 of .

2024 has rejected the bail of an accused [namely V. Senthil Balaji] in cash for job scam. Learned DSGI, further submits that Section 45 of PMLA, the petitioner may not be released on interim bail, as accusation is serious.

8. Be that as it may, once, the petitioner has taken a specific stand, in Para 2 of the instant petition, that he intends to take up the matter with Punjab National Bank Authorities on 30.09.2024 and thereafter, if needed, so as to safeguard his assets-

property, which are several times higher in value vis-à-vis the alleged amount due to the Bank; and in order to safeguard his property-assets, an opportunity for mediation with the Bank, appears to be a plausible ground for granting the concession.

Moreover, the judgment passed by the Madras High Court in case of V. Senthil Balaji [in Para 4 of Reply], has been set aside by the Hon'ble Supreme Court, in Criminal Appeal No.4011 of 2024, as Senthil Balaji vs The Deputy Director, Directorate of Enforcement, decided on 26.09.2024 reiterating the principle of criminal jurisprudence, that bail is a rule and jail is an exception, even in cases of Special Enactments i.e. PMLA and NDPS, in following .

terms :-

"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 CrPC. 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)(fi) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this .

Court starting from the decision in the case of K.A. Najeeb', which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb', .

can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(i) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the .

criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide detective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

29. As stated earlier, the appellant has r 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.

31. Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final disposal of CC No. 9 of 2023 pending before the Principal Session Judge, Chennai, on the following"

9. In the background, of the facts and circumstances and the mandate of law declared by the Hon'ble Supreme Court, in case of V. Senthil Balaji [supra] this Court is of the considered view, that in terms of the orders dated 16.09.2024 in Cr.MP(M) No.2023 of 2024, the petitioner has to surrender before the jail authorities on 28.09.2024;

due to which the petitioner shall be deprived of his right to safeguard his asset(s)-property, for which .

he has to attend mediation before the Punjab National Bank, Regional Head Authorities on 30.09.2024 and if required thereafter. Moreover, the stringent provisions of bail, under the PMLA or the NDPS Act, cannot refrain this Court, from granting bail [including Interim Bail, as in this case] where, the accusation and incarceration was made long back since July 2019 and more so, when, the conclusion of trial is likely to take considerable time.

10. In these circumstances, this Court is of the considered view, that interim protection needs to be accorded to the bail petitioner [Hitesh Gandhi], till the next date of hearing, subject to following conditions :-

(i) Petitioner shall be released on Interim Bail on furnishing a Personal Bond in the sum of Rs.2,00,000/- [Rupees Two Lakh], with one surety, in the like amount, to the satisfaction of Learned Special Judge, [PMLA], Shimla.

(ii) Petitioner shall not hinder the smooth flow of the investigation and shall join the investigation, if called for, by the Investigating Agency;

(iii) Petitioner shall not jump over the bail and also shall not leave the country without prior information of the Court;

(iv) Petitioner shall not tamper with the prosecution evidence not hamper the .

investigation of the case in any manner;

(v) Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or the witnesses;

(vi) Petitioner shall neither involve himself nor shall be abet the commission of any offence. The involvement or abetting in any offence, shall entail cancellation of r pre-arrest bail, automatically;

(vii) Petitioner shall surrender his passport to the Learned Trial Court and he shall not leave the country without the prior permission of this Court;

(viii) It is clarified that violation of any of the conditions imposed hereinabove shall entail cancellation of bail automatically;

(ix) Respondent, is at liberty, to move this Court for modification or cancellation of bail, if circumstances, so necessitate or in case of violation of any of the conditions mandated herein; and

(x) Petitioner shall appear before the Designated Officer/Investigating Officer, Enforcement Directorate Office [ED] Sub Zonal Office, Rani Villa, Bagrian House, Strawberry Hills, Chhota Shimla, Shimla [HP] as and when called.

11. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if .

required, may verify passing of order from Website of the High Court.

List the matter for further consideration before the Appropriate Bench on 03.10.2024.

September 27, 2024
(Chiranjeev)

to

(Ranjan Sharma)
Judge