

Kalvakuntla Kavitha

v.

Directorate of Enforcement

(Criminal Appeal No. 3522 of 2024)

27 August 2024.

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Matter pertains to the grant of the benefit of the proviso to s.45(1) of the PMLA to the applicant being a well educated and accomplished woman, who has remained Member of Parliament and a Member of Legislative Council.

Headnotes[†]

Prevention of Money Laundering Act, 2002 – s.45 proviso – Beneficial treatment under s.45 proviso – Entitlement – Applicant-well educated and accomplished woman, has remained Member of Parliament, Member of Legislative Council, was one of the chief conspirators in the entire conspiracy relating to formulation and implementation of new Excise Policy of Delhi – CBI case and ED case against her – Bail application – Rejected by the trial court as also the Single Judge of the High Court – Correctness:

Held: Proviso to s.45(1) would entitle a woman for special treatment while her prayer for bail is being considered – Proviso permits certain category of accused including woman to be released on bail, without the twin requirement u/s.45 to be satisfied – Entitlement to the benefit is not automatic, it would all depend upon the facts and circumstances of each case – However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied – On facts, the Single Judge of the High Court totally misdirected itself while denying the benefit of the proviso to s.45(1) to the applicant – Single Judge erroneously observed that the proviso to s.45(1) is applicable only to a “vulnerable woman” and that the applicant could not be equated to a “vulnerable woman” – Courts, while deciding such

* Author

Digital Supreme Court Reports

matters, should exercise the discretion judiciously using their prudence – Furthermore, it cannot be said that merely because a woman is highly educated or sophisticated or Member of Parliament or Member of Legislative Assembly, she is not entitled to the benefit of the proviso to s.45(1) – Also, in CBI case charge sheet has been filed and in ED case complaint has been filed, as such the custody of the appellant not necessary for investigation – Appellant has been behind the bars for the last five months – There are about 493 witnesses to be examined and voluminous documents to be considered, the likelihood of the trial being concluded in near future is impossible – Prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial – Bail is the rule and refusal is an exception – Fundamental right of liberty provided Art.21 is superior to the statutory restrictions – Thus, the impugned judgment passed by the Single Judge quashed and set aside – Appellant to be released forthwith on bail on furnishing bail bonds – Constitution of India – Art.21. [Paras 10-14, 16, 17-22, 24, 25, 27-29]

Case Law Cited

Manish Sisodia v. Directorate of Enforcement, **2024 SCC OnLine SC 1920 : 2024 INSC 595**; *Saumya Chaurasia v. Directorate of Enforcement* [\[2023\] 15 SCR 848](#) : (2024) 6 SCC 401 : **2023 INSC 1073 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Benefit of the proviso to s.45(1) PMLA; Bail; Special treatment for women u/s.45(1) PMLA; Vulnerable woman.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3522 of 2024

From the Judgment and Order dated 01.07.2024 of the High Court of Delhi at New Delhi in BA No. 1675 of 2024

With

Criminal Appeal No. 3523 of 2024

Kalvakuntla Kavitha v. Directorate of Enforcement**Appearances for Parties**

Mukul Rohatgi, Vikram Chaudhri, Dama Seshadri Naidu, Sr. Advs., Nitesh Rana, P. Mohith Rao, Ms. J. Akshitha, Ms. Arveen Sekhon, Deepak Nagar, Somanadri Goud .k, Shaik Sohil Akthar, Ms. Muskaan Khurana, Eugene S Philomene, Ashish Jacob Mathee, Varun Varma, Hitesh Kumar Sharma, Shubam Rajhans, Nikhil Kohli, Nikhil Rohatgi, Keshav Sehgal, Shashank Khurana, Ms. Kalyani Bhide Gharote, Advs. for the Appellant.

Suryaprakash V Raju, A.S.G., Zoheb Hussain, Mukesh Kumar Maroria, Annam Venkatesh, Arkaj Kumar, Vivek Gurnani, Arvind Kumar Sharma, Samrat Goswami, Hitarth Raja, Ms. Shweta Desai, Ms. Abhi Priya Rai, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

B.R. Gavai, J.

1. Leave granted.
2. These appeals challenge the judgment and order dated 01.07.2024 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Application Nos.1675 and 1739 of 2024, vide which the learned Single Judge has refused to grant bail to the appellant herein.
3. Though the matter has been argued at length by Shri Mukul Rohatgi, learned Senior Counsel along with Shri D.S. Naidu and Shri Vikram Chaudhri, learned Senior Counsel appearing on behalf of the appellant, and Shri S.V. Raju, learned Additional Solicitor General of India (for short, 'ASG') for the respondent(s), at length; learned ASG has suggested that this Court should avoid elaborate discussions on the merits, inasmuch as any observations may prejudice the rights of either of the parties at the trial.
4. We appreciate the fairness of the learned ASG in suggesting the Court not to record the detailed elaborations on the merits of the case. It has been a consistent view of this Court that the Courts should avoid elaborate discussion at the stage of considering application for bail. We would therefore avoid any discussion on the merits of the present case inasmuch as the same may prejudice the rights of either of the parties at the trial.

Digital Supreme Court Reports

5. Shri Rohatgi, learned Senior Counsel submits that there is no material on record so as to implicate the appellant herein with the offences charged with. In any case, he submits that insofar as the appeal arising out of SLP(Crl.) No.10778 of 2024 is concerned, the complaint has been filed by the prosecution and insofar as the appeal arising out of SLP(Crl.) No.10785 of 2024 is concerned, the charge-sheet has already been filed. It is submitted that since the investigation is complete, further custody of the appellant would not be required.
6. Shri Rohatgi, relying on the judgment of this Court in the case of ***Manish Sisodia v. Directorate of Enforcement***,¹ submits that inasmuch as both the said case and the present case arise out of the same set of facts and so in the present case also there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages. He further submits that no proceeds of crime have been recovered from the appellant. Shri Rohatgi further submits that the appellant is a woman and is therefore entitled to special treatment under *proviso* to Section 45(1) of the Prevention of Money-Laundering Act, 2002 (for short, 'PMLA').
7. Shri S.V. Raju, learned ASG vehemently opposed these appeals. He submits that the statements of various witnesses as well as co-accused would clearly show that the present appellant was a kingpin in arranging the deal between the co-accused-Arvind Kejriwal and the south lobby. He submits that the statements of the witnesses clearly show that the proceeds of the crime have passed through, or at least at her instance. Learned ASG further submits that not only the statements recorded under Section 50 of the PMLA but also the statements recorded under Section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate would clearly implicate the present appellant in the trial.
8. Learned ASG further submits that the learned Trial Judge has rightly refused to grant the benefit of the *proviso* to Section 45(1) of the PMLA on the ground that the appellant is a woman, inasmuch as she has indulged herself into tampering with the evidence and influencing the witnesses. He submits that the appellant has formatted her mobile set in order to destroy the evidence which was against her.

Kalvakuntla Kavitha v. Directorate of Enforcement

9. Learned ASG further submits that the sequence as to in what manner the accused Arun Pillai has retracted his statement would clearly show that it is the present appellant, who has a role to play. He submits that though the statement of Arun Pillai under Section 50 of the PMLA was recorded on 10.11.2022 after a period of more than three months, he has retracted the statement on 09.03.2023. He further submits that it is relevant to note that the first summons were issued to the present appellant on 07.03.2023 i.e., two days prior to the day Arun Pillai retracted his statement. He therefore submits that the Court will have to draw an inference that the appellant is indulging in influencing the witnesses.
10. On perusal of the record, we find that in CBI case charge-sheet has been filed and in ED case complaint has been filed. As such, the custody of the appellant herein is not necessary for the purpose of investigation.
11. The appellant has been behind the bars for the last five months. As observed by us in the case of **Manish Sisodia** (supra), taking into consideration that there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages, the likelihood of the trial being concluded in near future is impossible.
12. Relying on the various pronouncements of this Court, we had observed in the case of **Manish Sisodia** (supra) that the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.
13. We had also reiterated the well-established principle that “*bail is the rule and refusal is an exception*”. We had further observed that the fundamental right of liberty provided under Article 21 of the Constitution is superior to the statutory restrictions.
14. We are further of the view that the *proviso* to Section 45(1) of the PMLA would entitle a woman for special treatment while her prayer for bail is being considered.
15. The said *proviso* to Section 45(1) of the PMLA reads thus:-

“Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-

Digital Supreme Court Reports

laundering a sum of less than one crore rupees, may be released on bail, if the special court so directs.”

16. A perusal of the above *proviso* would thus reveal that the *proviso* permits certain category of accused including woman to be released on bail, without the twin requirement under Section 45 of the PMLA to be satisfied. No doubt that, as argued by the learned ASG, in a given case the accused even if a woman may not be automatically entitled to benefit of the said *proviso* and it would all depend upon the facts and circumstances of each case.
17. However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied.
18. The order of the learned Single Judge, which denies the special treatment to the present appellant makes for an interesting reading. The learned Judge observed thus:-

“65. As mentioned in the contents of the application itself, the applicant Smt. K. Kavitha, is a member of the Telangana Legislative Council from the Nizamabad Local Bodies Constituency and has held significant political positions, including Member of Parliament (MP) for Nizamabad formerly. During her tenure in the Lok Sabha, she served on several committees. She had initiated a ‘Free Meal Initiative’ in her constituency, providing meals at state hospitals and during the pandemic. She is also the founder of the Telangana Jagruti Skill Centre, offering vocational training to youth, and as per her pleadings has been involved in educating poor children in the Nalgonda district since 2006. It is claimed in the pleadings that she is a prominent figure in the Telangana statehood movement. She holds a Bachelor’s degree in Engineering and a Master’s degree in Sciences. She has also served as the National Commissioner of Bharat Scouts and Guides since 2005 amongst many other achievements mentioned in the pleadings.

66. It is heartening to note that the applicant Smt. K. Kavitha, is a highly qualified and well-accomplished

Kalvakuntla Kavitha v. Directorate of Enforcement

person, having made significant contributions to politics and social work as enlisted by her in her pleadings. The same were not disputed by the investigating agencies. Her educational qualification and the activities, she has enlisted for the betterment of society in the State of Telangana are essentially, one side of herself and is impressive. However, while deciding the present bail applications, though this Court may appreciate these accomplishments, it cannot lose sight of serious allegations levelled by the prosecution and the evidences collected during the course of investigation and presented before this Court, which prima facie reveal her role in the offence in question.

67. Furthermore, as far as benefit of proviso to Section 45 is concerned, when it is the case of applicant herself that she is a well educated and accomplished woman, who has remained Member of Parliament, Member of Legislative Council, etc., this Court is bound to keep in mind the observations of the Hon'ble Apex Court in case of [Saumya Chaurasia](#) (supra). The material collected by the Directorate of Enforcement, which has been discussed in the preceding paragraphs has pointed out that the applicant herein was one of the chief conspirators in the entire conspiracy relating to formulation and implementation of new Excise Policy of Delhi. In fact, some other accused persons were working on behalf of the applicant and as per her instructions, as noted in the preceding discussion.

68. Thus, Smt. K. Kavitha cannot be equated to a vulnerable woman who may have been misused to commit an offence, which is the class of women for whom the proviso to Section 45 of PMLA has been incorporated, as held by the Hon'ble Apex Court in case of [Saumya Chaurasia](#) (supra). Accordingly, this Court is of the considered opinion that Smt. K. Kavitha is not entitled to the benefit of proviso to Section 45 of PMLA."

[emphasis supplied]

Digital Supreme Court Reports

19. Day in and day out it is argued before us on behalf of the prosecution that merely because an accused has a special status in terms of he/she being a Member of Parliament or a Member of Legislative Assembly or a Minister or a Chief Minister, etc., they should not be given a special treatment and should be treated equally as any other accused.
20. However, the learned Single Judge in the present case, while denying the benefit of the *proviso* to Section 45(1) of the PMLA, comes to a “heartening conclusion” that the appellant is highly qualified and a well-accomplished person. The learned Single Judge further observed that the appellant has made significant contributions to politics and social work. The learned Single Judge further observed that while deciding her bail application, the Court may appreciate her accomplishment, however, it cannot lose sight of the serious allegations levelled by the prosecution and the evidence collected during the course of the investigation and presented before the Court.
21. The learned Single Judge thereafter proceeds to observe that the present appellant cannot be equated to a “vulnerable woman”.
22. We find that the learned Single Judge erroneously observed that the *proviso* to Section 45(1) of the PMLA is applicable only to a “vulnerable woman”.
23. We further find that the learned Single Judge totally misapplied the ratio laid down by this Court in the case of [Saumya Chaurasia v. Directorate of Enforcement](#).²
24. A perusal of the judgment of this Court in the case of [Saumya Chaurasia](#) (supra) would show that this Court has observed that the Courts need to be more sensitive and sympathetic towards the category of persons included in the first *proviso* to Section 45 of the PMLA and similar provisions in the other Acts. The Court observes that the persons of tender age and women who are likely to be more vulnerable may sometimes be misused by unscrupulous elements and made scapegoats for committing such crime.
25. No doubt that this Court observes that nowadays the educated and well-placed women in the society engage themselves in commercial

Kalvakuntla Kavitha v. Directorate of Enforcement

ventures and enterprises and advertently or inadvertently engage themselves in the illegal activities. The Court therefore puts a caution that the Courts, while deciding such matters, should exercise the discretion judiciously using their prudence.

26. This Court in the case of *Saumya Chaurasia* (supra), while paraphrasing *proviso* to Section 45(1) of the PMLA stated in paragraph 23 as follows:

“23. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements”

27. This Court, in the carefully couched paragraph extracted above used the phrase “*persons of tender age and woman who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements*”. This is vastly different from saying that the *proviso* to Section 45(1) of the PMLA applies only to “vulnerable woman”. Further, this Court in the case of *Saumya Chaurasia* (supra) does not say that merely because a woman is highly educated or sophisticated or a Member of Parliament or a Member of Legislative Assembly, she is not entitled to the benefit of the *proviso* to Section 45(1) of the PMLA.
28. We, therefore, find that the learned Single Judge of the High Court has totally misdirected herself while denying the benefit of the *proviso* to Section 45(1) of the PMLA.
29. In the result, we allow these appeals, in the following terms:-
- (i) The impugned judgment and order dated 01.07.2024 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Application Nos.1675 and 1739 of 2024 are quashed and set aside;
 - (ii) The appellant is directed to be released forthwith on bail in connection with Complaint Case No.31 of 2022 arising out of ECIR/HIU/14/2022 dated 22.08.2022, P.S. HIU, Directorate of Enforcement and RC-0032022A0053 dated 17.08.2022, P.S. CBI, ACB, on furnishing bail bonds in the sum of Rs.10,00,000/- in each of the cases;

Digital Supreme Court Reports

- (iii) The appellant shall not make any attempt to tamper with the evidence or influence the witnesses;
 - (iv) The appellant shall deposit her passport with the learned Trial Judge; and
 - (v) The appellant shall regularly attend the Trial Court and cooperate with the expeditious disposal of the trial.
- 30.** Though we have not observed anything on the merits of the matter, any observation in this judgment would not prejudice the trial.
- 31.** Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

[†]Headnotes prepared by: Nidhi Jain